DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 3 OF 16

FOLDER 25

EWSC DISMISSALS CASE 5428

NOV 1971

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In the Matter of the Discharge of R. McKee,

J. Taylor, A. Chandler, and J. Edwards

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CASE NO. 5428
November 30, 1971

On May 28, 1970, J. Taylor, A. Chandler, R. McKee, and J. Edwards were discharged by telegram (Union Exhibit "A") from the Eldon Avenue Axle Plant for allegedly violating Section (5) of the Chrysler-UAW National Agreement. The Corporation claims that the four-mentioned employees on various occasions on May 27, and May 28, 1970 picketed the plant entrances. The Union contends and will prove that the named grievants and other employees did stand and walk in front of the plant gates demonstrating and protesting the unsafe working conditions at the Eldon Avenue Axle Plant.

On June 5, 1970, the Union submitted the following grievance in behalf of the four named employees:

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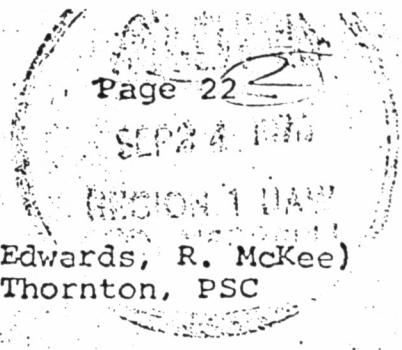

(J. Taylor,
70-482 - Discharges (D-71, 72, 75, 80) (A. Chandler, J. Edwards, R. McKee)
Date presented: 6- 5- 70 - Presented by: C. Thornton, PSC

GRIEVANCE:

The Union protests the Company's discharge of the above named employees as improper, illegal and completely unjustified.

Approximately a year ago Rose Logan, a janitor, died as a result of a combination of unsafe working conditions and the incompetence and indifference of the plant doctor and plant safety man at the Eldon Avenue Gear and Axle Plant. She was struck in the right lower leg by a jitney driver whose vision was obscured by an improperly loaded skid box. The injury was obviously severe, and the plant Workmen's Compensation

Representative recommended she not work until it was healed. However, in order to protect the plant's lost time record the Safety Director and the doctor ordered Mrs. Logan to work. From the date of her injury to the day of her death she was transported to and from the plant by taxi. Each day she performed such work as dusting office furniture and folding towels in the Medical Department. Eventually she developed a thromboplebitis in her right leg. The usual treatment for such a comdition is complete inactivity, but the plant doctor scorned to use obvious medical techniques. The inevitable occured: a blood clot loosened from her leg and travelled to her heart with fatal results.

May 13, 1970, Mamie Williams, a press operator, with twenty-six years seniority, died as a result of management's callous indifference to human life, and the incompetence of the plant doctor. Mrs. Williams had been on sick leave for a substantial period of time. She received a notice from management to return to work or be fired. She returned to the plant and was examined by the plant doctor. Her blood pressure was too high for her to work; even the plant doctor concurred in this. However, apparently because she was afraid of losing twenty-six years seniority, Mrs. Williams insisted on returning to work, and the doctor agreed. Regardless of Mrs. Williams motive for returning to work, or the vehemence of her pleas, it was an obvious dereliction of duty by the doctor to allow her to return to work knowing of her high blood pressure. She returned to work, was soon carried out of the plant on a stretcher, and a few days later she was dead.

During the second week of May, 1970 the Eldon Worker's Safety Committee, a group of workers concerned about safety in the plant, was formed. The Committee's purpose was to educate workers in the plant concerning the abnormally dangerous working conditions at Eldon, and to inform them of possible methods of alleviating them. A number of leaflets and bulletins were distributed at the plant gates, all emphasizing safety on the job.

At approximately 6:15 a.m., Tuesday, May 26, 1970, Gary Thompson, a twenty-two year old jitney driver, died as a direct result of unsafe conditions in the plant. He was told to empty a hopper of scrap steel weighing three to five tons into a railroad car. In order to open the

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hatch of the hopper Thompson was forced to dismount from the jitney and pry at the hopper release catch with a stick. (It is common knowledge the release catches of the hoppers are almost always stuck shut with dirt and rust.) The jitney's emergency brakes were disconnected. (It is common

knowledge that almost none of the jitneys at Eldon have working emergency or primary brakes.) Apparently, when the hopper hatch was opened, the load shifted causing the brakeless jitney to roll into a chuck hole in the loading platform. The jitney tipped over crushing Gary Thompson under tons of steel. It is our understaning that all the unsafe conditions that caused Thompson's death--the brakeless jitney, the jammed hopper hatch release catch and the chuck holes in the loading platform--have been the subject of grievances time and time again, and the company has taken no action whatsoever to correct them.

Gary Thompson's death was a result of the very conditions the Eldon Worker's Safety Committee was trying to eliminate. Members of the Committee were convinced other deaths were imminent, and that the abnormally dangerous conditions in the plant must be eliminated immediately. On May 27, 1970 and May 28, 1970 pickets were established to explain how and why Gary Thompson had died, and to explain the imminent danger facing every worker in the plant. At no time did the pickets use such words and phrases as "strike", "shut it down", etc. At all times factural statements such as "unsafe plant" "two murders in two weeks", etc. were used.

The entire program of the Eldon Worker's Safety Committee was consistant with Section 502 of the National Labor Relations Act which stated the withholding of labor in a good faith belief of abnormally dangerous working conditions does not and cannot constitute a strike.

Either through ignorance of basic labor law, orin a wilful and petty spirit of retaliation, management has refused to recognize our sincere good faith position in this matter. May 28, 1970 A. Chandler, J. Edwards, R. McKee and H. J. Taylor each received telegrams from the company informing us we had been discharged for violation of Section 5 of the National Agreement between Chrysler and the UAW in connection with our activities for the Eldon Worker's Safety Committee. Approximately twenty-four hours later we were told to report to a meeting with plant labor relations officials in the plant offices. At this meeting we were given offical separation separation notices, and a report of C. Polsgrove, Labor Relations Director, was read to us. However, Management was unable to produce, on demand, the actual evidence supposedly supporting our discharges, namely the reports of our supervisors thought we were actually seen picketing at the plant gates. This, in spite of management's having had more than ample opportunity to prepare and substaniate its case against us. In other words, Chrysler's position is it will discharge us, deprive us of our livelihood, without a shred of evidence to support its actions. This highhanded arrogance we can only describe a contemptible.

The union therefore demands A. Chandler, J. Edwards, R. McKee and H. J. Taylor be immediately reinstated and made whole.

(Underscoring added by Appeal Board)

The Union would like the Chairman to decide the four named-grievants' cases separately, since this was the manner in which the Corporation answered the afore-mentioned grievance (Grievance #70-482).

The brief will also cover the facts in the case of Taylor, McKee, and Chandler as if they were one. The Corporation's facts on the three are basically the same. Regarding the discharge of Edwards, (since there is a technical protest as to whether it should be part of the grievance), the Union will handle the Corporation's allegations separately in verbal arguments.

The grievance relates many of the circumstances that precipitated the protest demonstration of May 27, and 28, 1970. To properly present this case the Union would like to cite some of the subsequent events and facts.

On May 26, 1970, Gary Thompson, a 22 year-old Vietnam veteran, employed at the Eldon Avenue Axle Plant was killed because of an unsafe Hilo. This tragic death triggered the May 27, and 28, 1970 demonstration.

The Eldon Avenue Axle Plant has, for many years, been a plant where working conditions were unsafe and hazardous. This undisputed fact was presented in the various Special Conferences and local negotiations between Eldon Management and the Union. While the Local Union officers received favorable answers to the request for correction of these problems, the implementation had not taken effect. This was evident in Appeal Board Case 5351 involving Jordon Sims. Following the wildcat strike of May 1, to 4, 1970 (for which Sims was discharged), a group of secondary Union leaders and rank and file members formed the Eldon Workers Safety Committee. This Committee was comprised of the following employees: George Bauer, John Moffett, Jordon Sims, James Edwards, John Taylor, J. C. Thomas, William Sparks, Robert McKee, Tony Moore, and Alonzo Chandler.

This Committee's first meeting was held sometime during the early part of May, at which time they decided that since the Union procedure had not remedied the problem of safety at

the Eldon plant, they would consult an attorney. On May 11, 1970 attorneys Ronald Glotta and Michael Adelman, whose office is located at 1529 Broadway, downtown Detroit, met with the Committee and discussed the procedure the Committee could pursue to correct the conditions in the plant. Attorneys Glotta and Adelman advised the Safety Committee that under Section 502 of the National Labor Relations Act, they as workers had a right to withhold their labor when working conditions are hazardous to the employees.

The attorneys advised this self-appointed committee that under Section 502 of the National Labor Relations Act, they could protest in so far as withholding their labor was concerned but that they did not have the right to prevent workers from entering the plant.

Section 502 of the Act provides the following:

> "Saving provisions
>
> "Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employees an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this chapter. June June 23, 1947, c. 120, Title V & 502, 61 Stat. 162." (Underscoring added)

Thus, the activities of the Eldon Workers Safety Committee were undertaken with the advice of competent counsel, Michael Adelman and Ronald Glotta. The attorneys further explained that Section 502 of the National Labor Relations Act would provide legal protection for the sort of informational and educational demonstration they planned. This section states that an employee or group of employees who have

"good faith" belief "...of abnormally dangerous working conditions . . ." do not have to work under those conditions and such "good faith" refusal does not constitute a "strike."

Further, the Safety Committee was advised that a Federal statute will supersede a contract or portion of a contract negotiated under that statute. They were informed that since the NLRB authorizes contract negotiations and in fact the Chrysler-UAW National Agreement was negotiated under the authority of that statute, Section 502 takes precedence over the Chrysler-UAW National Agreement.

Messrs. Taylor, McKee, and Chandler acted at all times on a "good faith" belief basis. This can be proven by an examination of the contents of the first two Eldon Workers Safety Committee leaflets (Union Exhibit "C" -- leaflet #1; and Union Exhibit "D" -- leaflet #2) as opposed to Eldon Workers Safety Committee leaflets #3 and #4, written by members of the League of Revolutionary Black Workers (Union Exhibit "E" -- leaflet #3; and Union Exhibit "F" -- leaflet #4). It should also be pointed out at this time that Leaflets #3 and #4 were written and distributed without authorization from the Safety Committee and that the use of the names on the leaflets was also completely unauthorized.

The first two leaflets, which were written by Taylor (Exhibits "C" and "D") contain strongly emphasized statements concerning Section 502 and its meaning. They also contain highly specific, well-documented instances of safety hazards in the plant. The Safety Committee obtained this information from several Stewards and fellow workers in several departments. The Safety Committee was strongly advised by counsel not to use the terms "strike," "work stoppage," etc., subsequently, these words do not appear in leaflets #1 and #2 (Exhibit "C" and "D").

By contrast, leaflets #3 and #4, written by members of the League, contain the words "work stoppage," make no specific statements concerning safety hazards (such as machine numbers, department numbers, etc.), and make only minimal mention of Section 502 and its doctrine.

The Safety Committee was also advised against violence of any sort in their activities. Although strongly provoked, they committed no acts of violence.

Taylor, McKee, and Chandler devoted most of their time in the demonstration at the Main Gate (West Gate) and were unaware of the actions taken by Edwards at the Jordan and East Gates. On May 27, 1970 when J. Sims and J. Taylor were informed that Edwards was passing out an unauthorized leaflet, they instructed Edwards not to pass the leaflet out and to refrain from trying to stop employees from going into the plant. (In the J. Sims case the Chairman will recall that when referring to the May 27, and 28, 1970 incident, he stated it was a demonstration, not a "strike.")

Edwards was also told that the was not representing the Safety Committee with his actions. One of the attorneys also advised Edwards against using the leaflets and informed him that his actions at the Jordan and East Gates were not in keeping with the demonstration.

During the demonstration on May 27, 1970 on the third shift a supervisor's car entered the West Gate and moved toward the management parking lot. J. Taylor and his brother, Thomas Taylor were marching next to each other as the car entered the driveway. Thomas Taylor was separated by the car and began slowly backing away from it. Suddenly, in a deliberate manner, or at best, grossly negligent, the car lurched forward and the left front fender struck Thomas Taylor in the stomach (Thomas Taylor was a former Eldon employee). Seized with blind rage, J. Taylor ran around the back of the car and tried to open the door on the driver's side. The door was locked and Taylor quickly gave up after noting that his brother was not seriously injured. By this time J. Sims and a lawyer from the National Lawyer's Guild were on the scene and finished "cooling off" the incident.

The violence allegedly perpetuated by other members of the Eldon Workers Safety Committee at other gates can only be described as undisciplined adventures, along with the improper use of the term "strike," etc. Taylor, McKee, and Chandler did not participate in these actions.

Another indication of "good faith" in the Safety Committee's program was the use of lawyers at the gates on all shifts to

help curtail any undisciplined action. Overall, the project was conceived and carried out in what the Committee thought was a completely legal manner; and surely it cannot be seriously asserted that a program such as this one, operating under the "umbrella" of a Federal statute, was operating outside the "system." How much more "inside the system" can one be with a Federal statute and the First Amendment?

Events subsequent to those of May 27, and 28, 1970 have objectively corrected the many safety complaints that were not complied with by the Corporation. The Union would like to refer to the following:

1. The UAW's inspection of the plant reported in Lloyd Utter's report of June 4, 1970 -- Union Exhibit "G".

2. The August, 1970 Memorandum of Understanding which contains an admission by Chrysler Corporation that conditions were not what they should be in the Eldon safety program; a list of over 150 separate safety and housekeeping items to be corrected by October 1, 1970, and a massive realignment of janitorial forces for housekeeping purposes -- Union Exhibit "H."

3. The admission by the Local Union in the June, 1970 issue of the Criterion (the Local's newspaper) that the conditions which caused Gary Thompson's death had been grieved many times without success. Union Exhibit "I."

4. Lloyd Utter's inspection of the plant in November, 1970 which revealed many safety and good housekeeping violations -- Union Exhibit "J."

5. The passage into law in December, 1970 of the Occupational Health and Safety Act whose preamble:

   a. asserts the importance of on-the-job safety;

   b. states that employees and employers have an equal responsibility in this area

(Union Exhibit "K" -- copy of the Occupational Safety and Health Act of 1970 booklet.)

6. The January, 1971 inspection of Eldon Avenue Axle by the Michigan Department of Labor which revealed numerous safety violations -- Union Exhibit "L."

7. Referee F. Philip Colista's opinion in the Fred Holsey Civil Rights case, which condemned the Eldon Safety Program as "abominable," among other things -- Union Exhibit "M."

As Union Exhibit "N," we would like to submit the NLRB charge against the Chrysler Corporation by the discharged employees. Union Exhibit "O," is the appeal statement on the NLRB decision of the charge.

We point out the afore-mentioned exhibits only to show the Chairman that there were safety problems in the Eldon Avenue Axle Plant and the Corporation did nothing or rather little to correct these unsafe conditions. This was the reason the Safety Committee had to be organized -- to focus attention both to the Union leadership and the Corporation that some measure had to be taken, and taken immediately to correct the seriously hazardous conditions in the plant.

The question is, were these individuals protected under Section 502 of the National Labor Relations Act or even under the First Amendment of the Contitution to demonstrate in the form of picketing? There may possibly be a question in the interpretation of Section 502 of the Act, but we are certain that the First Amendment surely guarantees citizens the right to protest.

The Supreme Court recently decided on a case of picketing and the right to picket. Justice Thurgood Marshall, who wrote the majority opinion stated in the case of Amalgamated Food Employees Union Local 590 vs. Logan Valley Plaza, in part:

> "We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment (Thornhill & Alabama 310 US88)."

In the case cited the decision stated:

> "Nevertheless, no case decided by this court can be found to support the proposition that the non-speech aspects of peaceful picketing are so great as to render the provision of the First Amendment inapplicable to it altogether."

Justice Douglas, concurring, stated in part:

> "Picketing is free speech plus -- the plus being physical activity that may implicate traffic and related matters. Hence the latter aspects of picketing may be regulated."

THE ISSUE

The issue in this case is whether employees of the Chrysler Corporation or non-employees can peacefully demonstrate to protest unsafe and hazardous working conditions in a factory, air pollution that a factory creates, or any other hazardous condition that the factory is responsible for.

During the 1955, 1958, 1961, 1964, 1967, and 1971 National negotiations, Chrysler employees left the plant to demonstrate against the Corporation and the Union concerning certain demands they wanted in their new contract. No penalty was assessed these pickets. Certain citizens demonstrated to protest the air pollution caused by Huber Avenue Foundry; which was their right to protect their health and safety. The First Amendment grants us certain rights that no one except the Supreme Court can take away from us.

Regarding the actions of Taylor, McKee, Chandler, and Edwards, they should have handled the demonstration under the "umbrella" of the Union contract, and if the demonstration was necessary, should have been held before the shift change or during the lunch hour. But counsel from competent attorneys advised them differently, according to their interpretation of Section 502

of the National Labor Relations Act.

Was this demonstration a violation of Section (5) of the National Agreement? If it was a violation of Section (5), the Corporation must prove that a strike existed. It is our information that on May 27, 1970 most of the employees reported for work, and on May 28, 1970 the absenteeism was about normal.

It is the Union's position that Taylor, McKee, and Chandler did not violate Section (5) of the Agreement by demonstrating. The Corporation has the burden of proof that the grievants did in fact participate in picketing as stated in Section (5) of the National Agreement. The intent of the parties in negotiating Section (5) was directed to picketing when calling an illegal strike and not in the form of demonstrating. We want to mention again that employees were not obstructed from going to work at the Main Gate (West Gate) and there was no attempt on the part of those demonstrating to keep them out.

On the other hand, we understand that Edwards did participate in actions not in the best interest of the demonstration, but because we have been unable to contact him (see Union Exhibit "B") we will have to rely on the allegations from the Corporation's facts and our own investigation, minus direct testimony of Edwards regarding his activities.

The Union would at this time like to commend Management at the Eldon Avenue Axle Plant and the Local Union officers for finally correcting the unsafe and hazardous conditions, which in our opinion, resulted from the May 27, 28, 1970 demonstration. We think it only fair to mention that presently the plant is adhering to a safety program that is well within the realm of the Occupational Safety and Health Act.

There are other citations the Union would like to present to point out that the penalty of discharge is too extreme for the actions of Taylor, McKee, Chandler, and Edwards. As Union Exhibit "P" -- GM Umpire's decision.

As Union Exhibit "Q" Arbitrator Peter Seitz's decision dated June 20, 1969 concerning the case of International Services of America, Inc. vs. International Union, United Automobile,

Aerospace, and Agriculture Implement Workers of America, AFL-CIO Local 43-4 (not published).

The Union also cites case F1-GM dated August 24, 1948 in which Umpire Saul Wallen reduced the discharge of two employees for allegedly leading a work stoppage to a 30-day disciplinary layoff. The Union would also like to mention that in 1946 the Union called a demonstration at Cadillac Square to protest the O. P. A. and all the workers in the plant walked off their jobs at Chrysler Corporation and participated in the demonstration. No one was disciplined for that demonstration.

As Union Exhibit "R" the Union presents a letter dated June 4, 1970 sent to all employees of the Eldon Avenue Axle Plant in response to the demonstration and the unfortunate death of Gary Thompson. Let it be noted that Plant Manager H. Engelbrecht labels the action of May 27, and 28, 1970 as "demonstrations" (naturally Management would call it "irresponsible") and does not refer to the demonstration as being a violation of the "no-strike" clause of the National Agreement.

There are many more citations that the Union could present to substantiate the request for modification of the extreme penalty of discharge, a few are:

GM-E-236
GM-E-319
GM-F-117
BNA 43-LA-849
BNA 45-LA-490
BNA 46-LA-188
BNA 49-LA-383
BNA 50-LA-472

The Chairman also stated in his decision of Appeal Board Case 5351 (involving J. Sims) that he did not consider modification because Sims was an experienced, elected Union officer and knew what Section (5) entailed. In this case all of the grievants are rank and file members who have never held

a Local Union office, and we sincerely hope the Chairman will give serious consideration to this fact in making a decision.

The Union would also like to point out that since their employment with the Corporation, Taylor, McKee, and Chandler have very good work records; this being the first time they have been involved in any controversy which caused harsh disciplinary action to be taken.

With the facts as presented and the direct testimony of the Union witnesses, we respectfully request the Chairman to modify the extreme penalty of discharge and reinstate Taylor, McKee, Chandler, and Edwards.