

DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 3 OF 16

FOLDER 28

EWSC CASE 5428 CHRYSLER

BRIEF 1 OF 2

TABLE OF CONTENTS

	<u>Page</u>
Original Grievance.....	1
The Grievants.....	5
I. INTRODUCTION.....	8
II. THE GRIEVANTS WERE THE HARD-CORE, DIE-HARD RINGLEADERS OF THE STRIK- ING AND PICKETING THAT TOOK PLACE AT THE ELDON PLANT ON MAY 27 AND 28, 1970.....	11
III. WORKING CONDITIONS AT THE ELDON AVENUE AXLE PLANT WERE NOT "AB- NORMALLY DANGEROUS." THE GRIEV- ANTS' BELIEF THAT THE CONDITIONS WERE ABNORMALLY DANGEROUS (EVEN IF IT WERE IN GOOD FAITH, WHICH IT WAS NOT) WOULD NOT PROTECT THEM.....	21
(i) Rose Logan.....	23
(ii) Mamie Williams.....	24
(iii) Gary Thompson.....	26
IV. ELDON AVENUE'S SAFETY RECORD AND ITS PROVISIONS FOR THE HEALTH AND SAFETY OF EMPLOYEES ARE EXCEPTION- ALLY GOOD.....	34
V. SECTION 502 DOES NOT EXCUSE THE ACTIVITIES OF THE GRIEVANTS, WHO CLAIM (FALSELY, AS WE BELIEVE, AND CONTRARY TO THE VIEWS OF ABOUT 4,000 OTHER ELDON EMPLOYEES) THAT THEY BELIEVED THE PLANT WAS AN AB- NORMALLY DANGEROUS PLACE FOR WORK.....	46

VI. THE NATIONAL LABOR RELATIONS BOARD ALREADY HAS ADJUDGED ADVERSELY TO THE GRIEVANTS THE PRECISE GROUND ON WHICH THEY TRY TO EXCUSE THEIR UNLAWFUL CONDUCT, AND THE IMPARTIAL CHAIRMAN ALREADY HAS FOUND THAT THEY ENGAGED IN THAT CONDUCT.....50

VII. THE IMPARTIAL CHAIRMAN ALSO HAS FOLLOWED THE RULE, WHICH VIRTUALLY EVERY ARBITRATOR FOLLOWS AND WHICH IS THE HEART OF THIS CASE, THAT ORDERLY PROCEDURES UNDER A COLLECTIVE BARGAINING AGREEMENT, NOT SELF-HELP BY INDIVIDUAL GRIEVANTS, ARE THE PROPER MEANS OF SETTLING DISPUTES, WHETHER REAL OR, AS IN THIS CASE, SHAM.....57

SUMMARY.....59

CONCLUSION.....61

TABLE OF CASES

	<u>Page</u>
<u>Allegheny Ludlum Steel Corp.</u> , 46 LA 890 (Saul Wallen, 1966).....	56
<u>Bluebird Knitwear Co. v. Livingston</u> , 54 LRRM 2476 (1963), modified 54 LRRM 2749 (1963).....	56
<u>Burgmaster Corp.</u> , 46 LA 750 (Melvin Leonard, 1966).....	56
<u>Chrysler Corporation, Appeal</u> Board Case No. 5351:1970:9 (Jordan U. Sims).....	13, 34, 56, 57
<u>Chrysler Corporation, Appeal</u> Board Cases Nos. 96, 126A, 495, 814, 814B, 904, 905, 906, 1028, 1611, 1706, 2064, 3371, 5428-70:482.....	58-59
<u>Chrysler Corporation, NLRB</u> Case No. 7-CA-7999.....	12, 28, 32, 50-54, 61
<u>Curtis Mathes Manufacturing</u> <u>Co.</u> , 145 NLRB 473 (1963).....	48
<u>Kennecott Copper Corp.</u> , 32 LA 646 (Arthur M. Ross, 1959).....	56
<u>Middle States Tel. Co.</u> , 44 LA 580 (John Day Larkin, 1965).....	56
<u>Myers Indus. Elec.</u> , 177 NLRB 75, 32, 71 LRRM 1425 (1969).....	48
<u>NLRB v. Fruin-Colnon Construc-</u> <u>tion Corp.</u> , 33 F.2d 885 (CA 3, 1964).....	48

Page

<u>Redwing Carriers, Inc., 130 NLRB</u> 1208 (1961).....	47
<u>Spielberg Manufacturing Co., 112</u> NLRB 1080 (1955).....	56
<u>Stop & Shop, Inc., 161 NLRB 75</u> (1960).....	48
<u>Walker Stainless Equipment Co.,</u> 40 LA 301 (Thurman M. Sanders, 1962).....	56

Appeal Board of
CHRYSLER CORPORATION

and

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA

Case No. 5428-70:482

Discharges of J. Edwards,
H. J. Taylor, R. McKee,
and A. Chandler

Before: GABRIEL N. ALEXANDER, Impartial Chairman

Original Grievance

The Union presented the original grievance herein at
the Third Step on June 5, 1970. The grievance reads as fol-
lows:

"70-482 - Discharges (D-71, 72, 75, 80) (J.
Taylor, 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 jani-
tor, died as a result of a combination of un-
safe 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 to 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 condition is complete inactivity, but the plant doctor scorned to use obvious medical techniques. The inevitable occurred: 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 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 understanding 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 factual statements such as

'unsafe plant' 'two murders in two weeks'
etc. were used.

"The entire program of the Eldon Worker's Safety Committee was consistent 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, or in 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, J. 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 official 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 substantiate 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 high-handed arrogance we can only describe as contemptible.

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

The Grievants

H. JOHN TAYLOR'S plant seniority date was November 8, 1968. Before then he had worked briefly in Chrysler's Workmen's Compensation Department but resigned when his supervisor advised him that his work was unsatisfactory. The Eldon Avenue plant thereafter hired him as an hourly rate production employee on November 8, 1968. He received a written warning for being out of his department without permission. He apparently founded and was the principal contributor to a publication, the ELDON WILDCAT, which devoted itself primarily to publishing scurrilous articles about Chrysler and the UAW and, as its name implies, advocating wildcat strikes, rather than using the grievance procedure, to redress alleged wrongs. On May 27, 1970, while picketing at the Main Gate of the Eldon Avenue plant, Mr. Taylor blocked entry of Superintendent Ronald Voorhies's car, struck the car with his picket sign, called Mr. Voorhies a pig and challenged him to get out of the car and fight.

ALONZO CHANDLER'S seniority date was May 15, 1967. He was a Drill Press Operator, Classification No. 2969, Department No. 72. On April 15, 1968, he received an oral warning for absenteeism. On February 5, 1969, he received

a 10-day disciplinary layoff for refusing to show his plant pass and pushing a Plant Protection Patrolman.

JAMES A. EDWARDS'S seniority date was August 26, 1968. He was a Major Assembler, Classification No. 0242, Department No. 80. He had the following disciplinary record:

<u>Date</u>	<u>Misconduct</u>	<u>Penalty</u>
2/4/69	Negligent performance	Written warning
3/13/69	Walking off the job	Suspended
4/22/69	Posting unauthorized literature and assaulting an employee	5-day layoff
6/16/69	Not performing work as instructed	Written warning
6/17/69	Absenteeism and tardiness	Written warning
7/9/69	Absenteeism and tardiness	Written warning
7/17/69	Absenteeism and tardiness	Written warning
7/17/69	Abuse of medical facilities	Written warning
7/18/69	Absenteeism and tardiness	1-day layoff
8/29/69	Threatening one employee and disrespectful remarks directed to another	Discharged (Reinstated without back pay 2/18/70)
2/2/70	Harassing and threatening Plant Protection Patrolman	(Was on discharge, later reduced to layoff)
3/31/70	Walked off the job without permission	Written warning

ROBERT McKEE's seniority date was February 2, 1966. He was a Drill Press Operator, Classification No. 2963, Department No. 71. He had the following disciplinary record:

<u>Date</u>	<u>Misconduct</u>	<u>Penalty</u>
12/18/67	Poor workmanship	Oral warning
9/18/68	Absenteeism and tardiness	Oral warning
2/26/69	Refusal to submit substantiating evidence of emergency call to leave work	Written warning
3/25/69	Reporting to work while intoxicated	3-day layoff
5/20/69	Absenteeism	Oral warning
8/19/69	Absenteeism	Written warning
12/29/69	Absenteeism	1-day layoff
5/7/70	While presumably on sick leave was passing out "ELRUM" literature at East Gate at 6:00 A. M.	

After Chrysler discharged them, and while their case was pending in the grievance procedure, the grievants continued their picketing and demonstrating at the plant. ✓

I.

INTRODUCTION

This case arises out of the culmination of a rash of illegal, unjustifiable and irresponsible strikes and picketing at the Eldon Avenue Axle Plant in April and May 1970. The immediate issue involves the discharge of H. John Taylor, Robert McKee, Alonzo Chandler and James Edwards for illegally striking and picketing at the plant on May 27 and 28, 1970, in violation of Section (5) of the National Production and Maintenance Agreement dated November 10, 1967, which reads as follows:

"The Union will not cause or permit its members to cause, nor will any member of the Union take part in, any sit-down, stay-in or slow-down in any plant of the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the grievance procedure as outlined in this agreement has been exhausted, and in no case over a matter on which the Appeal Board has power and authority to rule, and in no other case until the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, within sixty (60) days after receiving the Plant Manager's decision, has notified the Manager of

Labor Relations of the Corporation in writing that it has authorized a strike, specifying the grievances that are involved in the proposed strike, and negotiations have continued for at least seven (7) separate days on which meetings have been held after the Corporation has received such notice."*

This is not "just another clause" in a long and involved contract. It is the only clause that confers on the Corporation rights and benefits it would not have without a contract. Putative pundits unfamiliar with the real facts of industrial relations, particularly those far removed from the plants and the collective bargaining process -- are fond of saying that the "no strike" clause is the quid pro quo for the arbitration clause. This is far from correct. The "no strike" clause is the quid pro quo for a multitude of benefits for the union and its constituents -- union shop, checkoff, fixed wages, in most industries at very high rates that have helped to bring our economy to the brink of disaster at home and abroad; grievance procedures, with the employer paying for the time of representatives of the employees at every level; arbitration of most grievances; premium pay for daily and weekly overtime, for Saturdays, Sundays, and holidays; vacations with pay or pay in lieu of vacations; departmental, inter-departmental, and inter-plant

* Except where otherwise noted, underscoring is added.

seniority rights; supplemental unemployment benefits; insurances, pensions, and a host of other rights, privileges, and benefits. And for all this, the employer gets the "no strike" clause.

Emphasizing the extreme importance of this clause -- which protects employees as well as, theoretically, Chrysler, against strikes, and particularly wildcat strikes -- is the fact that violating it is the only misconduct that the parties have agreed, in unequivocal, unqualified terms, is cause for discipline. Section (7) of the above-mentioned Agreement provided, and the current contract still provides, that Chrysler

"...reserves the right to discipline any employee taking part in any violation of Section (5) of this agreement."

Of all of the acts of misconduct of which employees may be guilty -- fighting in the plant, assaulting a supervisor, intoxication on the job, sabotage, or violating other plant rules -- the parties singled out this one, and only this one, for special mention in the contract, rather than cover it in the general terms of Sections (6) and (52) [now (39)].

II.

THE GRIEVANTS WERE THE HARD-CORE, DIE-HARD RINGLEADERS OF THE STRIKING AND PICKETING THAT TOOK PLACE AT THE ELDON PLANT ON MAY 27 AND 28, 1970.

On May 27 and 28, 1970, the grievants (Messrs. Taylor, Chandler, McKee, and Edwards), Jordan U. Sims, and other members of the newly-formed "Eldon Workers' Safety Committee," which we will discuss later, picketed the Eldon Avenue Axle Plant. On May 27, at 5:30 A. M., Mr. Edwards slugged Peter Ulicny, a "fellow worker" who entered the plant. At 10:48 P. M. on May 27, Mr. Taylor blocked the driveway Superintendent Ronald Voorhies was using to enter the plant. When Mr. Voorhies was able to proceed, Mr. Taylor hit his car with his picket sign, calling him a pig, and challenged him to get out of his car and fight.

We do not understand, from the language of the grievance or from numerous other documents that originated with the pickets or their legal and lay representatives, that they deny that they were picketing or that their purpose was to foment a strike. On the contrary, the grievance herein admits that "on May 27, 1970 and May 28, 1970 pickets were established." The grievance alleges that the Eldon Workers'

Safety Committee (which includes the four grievants) established the picket line under the mistaken (as we shall show) assumption that Section 502 of the National Labor Relations Act protected their striking and picketing "in a good faith belief" that "abnormally dangerous" working conditions existed. On May 28, 1970, the Eldon plant discharged the four grievants herein whom it had identified as pickets.

The grievants thereupon filed not only the instant grievance but also, through their attorneys, Messrs. Philo, Maki, Ravitz, Adelman, Cockerel and Robb, filed with the National Labor Relations Board a charge of violation of Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended (Case No. 7-CA-7999). The charge, Exhibit A, submitted herewith, alleges still more explicitly that, after "composing and circulating leaflets at the Eldon plant," the "Eldon Workers' Safety Committee" agreed "that a more decisive course of action would have to be pursued." Therefore, the charge says, "the Eldon Safety Committee established pickets to inform the workers that continuing to work at the Eldon Plant, under status quo conditions, posed a serious threat to their lives." The charge goes on to say that "[s]uch pickets were maintained for all three

shifts on May 25, 1970 and the first shift on May 26, 1970."* The charge alleges that Messrs. Taylor, Chandler, McKee, and Edwards "were discharged because they advised their fellow workers, in good faith, that the only way to effectively remedy the abnormally unsafe conditions in the plant was by withholding labor," and in the belief (again, mistaken) that Section 502 of the National Labor Relations Act protected their activity.

The Impartial Chairman himself has found that the activities of May 27 and 28 constituted picketing. In Case No. 5351-1970:9, he found that on May 27, 1970, the day after Gary Thompson's death, "various persons began to pic-
ket the plant entrance and a third work stoppage (in addition to those that occurred on April 16-17 and May 1-4, 1970) was attempted. Grievant Sims was among the pickets." On the Safety Committee's handbills, Mr. Sims was listed as a member, although he claimed, in effect, that he did not authorize using his name.

Still further light on the activities of the Eldon

* The charge has the events it involves occurring two days before they actually took place. Thus, it says Gary Thompson died on May 24, 1970, not May 26; that the picketing took place on May 25 and 26, not May 27 and 28, and that the the plant discharged the charging parties on May 26, not May 28. Irrefutable documentary evidence establishes the correct dates.

Workers' Safety Committee, and particularly (a) that it engaged in picketing in order to precipitate a strike and (b) that Messrs. Taylor, Chandler, McKee, and Edwards fomented and led the activities, including the picketing, appears in the literature that the pickets distributed. See, for example, Exhibits B-1, 2, 3, 4, and 5, submitted herewith.

In this connection, a little background is in order. As the Impartial Chairman knows, small minorities of black employees in various automobile plants in Detroit have organized themselves into militant, extremely racist groups. At the Eldon plant there is such a group, known as ELRUM, the Eldon Revolutionary Union Movement. Three of the grievants in the present case, Messrs. Chandler, McKee, and Edwards, are active leaders of ELRUM and among its most militant members. The organization issues literature attacking in the most violent, racist, scurrilous and obscene terms Chrysler, the UAW, Local Union officers, "Uncle Toms," and others. It seizes on any pretext for its vicious attacks. In January 1969 it picketed the Eldon plant for no apparent reason other than to demonstrate its ability to intimidate large numbers of employees and keep them from working and disrupt operations.

H. John Taylor, although white, is no less militant than the leaders of ELRUM. Chrysler first employed him in its Corporate Workmen's Compensation Department and eventually assigned him to the Eldon Avenue plant, where his performance was "less than acceptable." At his supervisor's suggestion, he resigned and left the Corporation for a time. The Eldon plant later hired him as a production worker on the third shift. He, either alone or with other Eldon employees, publishes a paper called the "Eldon Wildcat." As its name implies, it strongly advocates unlawful action to remedy real or imaginary grievances and equals in viciousness, scurrility and obscenity the ELRUM publications.

A third organization was the Eldon Workers' Safety Committee, which ELRUM and Wildcat apparently formed early in May 1970, and which included the four grievants. It included, also, Jordan U. Sims, whom Chrysler had discharged for leading a wildcat strike on May 1 to 4, 1970, and whose case was then pending before the Appeal Board. It, too, issued violent literature, alleging that Chrysler had "murdered" Rose Logan and Mamie Williams, who, as we shall show, died natural deaths on November 28, 1968, and May 14, 1970, respectively, and Gary Thompson, who died in a tragic and unprecedented accident on May 26, 1970. (We shall deal

with all three of these fatalities later in this statement.)

In its Bulletin #3 dated May 27, 1970, entitled "STOP THE MURDERS!!!," the Safety Committee said it "has called this work stoppage to halt the abnormally dangerous working conditions at Eldon." The Bulletin further stated that "[f]or the past two weeks the Eldon Workers' Safety Committee, ELRUM and the Eldon Wildcat have distributed leaflets and bulletins" and urged employees: "DON'T WORK UNTIL ELDON IS A SAFE PLACE FOR ALL OF US TO EARN OUR LIVING." (Exhibit B-2.)

The pickets appeared at the Eldon plant gates on the morning of May 27, 1970. On May 28, the Eldon Wildcat bragged that "Eldon was shut down again yesterday -- for the third time in six weeks." It urged employees to "JOIN THE PICKET LINE." Like most of the Wildcat's literature and that of ELRUM and the Eldon Workers' Safety Committee, the issue of May 28 attacked the local and international leadership of the UAW as violently as it attacked Chrysler. (Exhibit B-4.)

The picketing became less and less effective and the pickets fewer and fewer. The percentage of employees who were scheduled to work on May 27 and the first two shifts

on May 28, 1970, but who were absent, was as follows:

<u>Date</u>	<u>Shift</u>	<u>Percentage Absent</u>
May 27	First	14.6
	Second	52.0
	Third	16.9
May 28	First	14.0
	Second	9.8

The plant lost production of 2,174 axles, and employees lost many thousands of dollars in wages.

An undated leaflet entitled "ELRUM SPEAKS," which probably appeared on May 28 (Exhibit C, submitted herewith), discloses, in no uncertain terms, that the activity for which Chrysler discharged the grievants was illegal picketing; that the purpose of the picketing was to promote an illegal strike; that, although other employees were duped into taking part in the picketing initially, they quickly abandoned the picket line, and that the discharges, Messrs. Edwards, Taylor, McKee, and Chandler, were the die-hard ringleaders and holdouts for further illegal activity. It says the Eldon Workers' Safety Committee was a "coalition" representing union officials (its literature listed four stewards), ELRUM and the Eldon Wildcat. It says its "primary function" was to

"educate the workers" concerning allegedly unsafe conditions in the plant. Following the death of Gary Thompson, according to the leaflet, "it was decided unanimously that the committee would initiate a work stoppage" and "picket the gates and ask our fellow workers to show their contempt for Chrysler and its lackeys by refusing to work until such a time when these conditions ceased to exist." According to the leaflet, "The picket line appeared Wednesday morning May 27, at 3 gates." It is highly significant that, as the leaflet admits, "The lines were met with little response on the part of workers." This was notwithstanding the fact that picket signs carried such slogans as

"CHRYSLER CORP. MURDER INC."

"SAFETY LAST AT ELDON"

"ELDON KILLS, WILL YOU BE
NEXT?"

"PROTECT YOUR LIFE -- REFUSE
TO WORK"

"I AM AFRAID TO WORK, ARE YOU?"

"TO BE OR NOT TO BE -- THAT IS
THEE QUESTION"

(It is obvious that the overwhelming majority of the 4,000 Eldon employees who are thoroughly familiar with the plant do not consider it to be dangerous, and were undaunted by the pickets' blatant printed and spoken warnings.)

ELRUM SPEAKS goes on to say that because of the employees' lack of response "most of the members on the Committee showed their real nature. They turned to members of ELRUM and Eldon Wildcat and made statements to the effect that the membership is _____, so let's _____ it." Some members of the Committee, however, "decided to stick it out." Those who stayed were "Jordan U. Sims, Robert McKee, James Edwards and Alonzo Chandler and John Taylor." "The rest have dropped back with a _____ the _____ membership attitude." "They, the stewards (the three on the Safety Committee) have faded into the background -- they have tucked tail and run, leaving ELRUM and Eldon Wildcat carrying the load. *** We are in an open class war with Chrysler Corporation and the sell-out union leadership is serving as shock troops for the corporation, trying to fan the flames of class war. *** Today odds are against us, there are only a few workers who are fighting back." Thus, alleged "class warfare", not dangerous conditions, was the real issue at Eldon. See also: Exhibit C-1.

The grievants continued to picket and demonstrate at the plant while their case was pending in the grievance procedure.

Events on July 15 and 16, 1970, while the grievants'

shocking and indecent efforts to turn every incident, no matter how tragic or how irrelevant, to their supposed advantage. On Wednesday, July 15, 1970, a Negro employee of the Eldon plant whom his foreman, Hugh Jones, also a Negro, had suspended for refusing to obey an order, smuggled a rifle into the plant, shot Mr. Jones repeatedly and killed him. He also killed another foreman, Gary Hintz, who was white, and Joseph Kowalski, a job-setter, who also was white. On Thursday, July 16, Messrs. Edwards, McKee, and Chandler distributed at entrances to the plant a pamphlet, a copy of which we submit herewith, marked Exhibit D, referring to the murdered men as "a Hillbilly," "a Pollock" and "a Uncle Tom NEE-GROW."

It is clear beyond any possibility of dispute that there was illegal picketing for the purpose of causing an illegal strike, that the grievants and Jordan Sims were leaders and instigators of the illegal activities and that nothing the grievants did was in good faith but that the incidents they describe were merely pretexts for their unlawful activities.

The picketing clearly violated Section (5) of the National Production and Maintenance Agreement in view of the fact (1) that the grounds were fictitious in the first place and

(2) in that (a) no grievance concerning the subject matter of the picketing had been processed through the grievance procedure or was even pending, (b) the Plant Manager had rendered no decision with respect to any such grievance, and (c) the International Union had not authorized a strike specifying any such grievance as being involved in a proposed strike.

On May 28, 1970, the Eldon Avenue Axle Plant sent to each of the grievants the following telegram, and received confirmation of the delivery thereof:

"THIS IS TO INFORM YOU THAT YOU ARE DISCHARGED EFFECTIVE THIS DATE FOR YOUR PARTICIPATION IN UNAUTHORIZED PICKETING OF THE ELDON AVE. AXLE PLANT ON MAY 27 AND 28 - 1970 IN VIOLATION OF SECTION 5 OF THE NATIONAL U.A.W.-CHRYSLER CORPORATION AGREEMENT."

III.

WORKING CONDITIONS AT THE ELDON AVENUE AXLE PLANT WERE NOT "ABNORMALLY DANGEROUS." THE GRIEVANTS' BELIEF THAT THE CONDITIONS WERE ABNORMALLY DANGEROUS (EVEN IF IT WERE IN GOOD FAITH, WHICH IT WAS NOT) WOULD NOT PROTECT THEM.

The grievants violated Section (5) of the National

Production and Maintenance Agreement on the pretext that they believed working conditions in the Eldon Avenue plant, to which they have tried so desperately to return, were "abnormally dangerous" and that Section 502 of the National Labor Relations Act, as amended, therefore protected them. They are wrong in their basic premise: (i) working conditions in the Eldon Avenue plant are not abnormally dangerous. On the contrary, they are abnormally safe. And (ii) even if the grievants believed, in good faith (which we deny), that the conditions were abnormally dangerous, the statute still, as we shall show, would not protect them: what they might have believed is irrelevant; the real facts are controlling. And, furthermore, the grievants did not claim that their particular working places were abnormally dangerous.

As to the claim that the Eldon Avenue plant is an "abnormally dangerous" place for work, the facts show the opposite.

We turn, first, to the grievants' futile efforts to show that three employees, Rose Logan, Mamie Williams, and Gary Thompson were "MURDERED" at the Eldon Avenue Axle Plant, a claim on which they seem chiefly to rely as showing the plant to be an abnormally dangerous place for work. Unsafe conditions in the plant did not contribute in the

slightest degree to the fatalities that the grievants use as a pretext for their illegal activities.

(i) They cite, first, the death of Rose Logan. Mrs. Logan was a Matron at Eldon Avenue. On November 9, 1968, she reported to the plant Medical Department, saying "I was walking down the aisle and the jitney came up behind me and knocked me down." According to the plant's medical records, she suffered contusion and laceration of the right lower leg and abrasion of the right upper arm. The Medical Department dressed her injuries and she returned to work. Later that same day, she came back to the department with a swollen and discolored right foot. The department sent her to Henry Ford Hospital. She was assigned to sitting work and continued to receive treatment and medication. She died on the night of November 28, 1968. Dr. A. R. W. Climie of Dr. John R. McDonald and Associates, Pathologists, 3825 Brush Street, Detroit, performed an autopsy at the request of Mrs. Logan's husband. A copy of the autopsy report is submitted herewith, marked Exhibit E. It shows that Mrs. Logan probably died of a heart attack (the autopsy showed heart damage from a previous attack) and flatly concludes that her death was not connected with the accident on November 9, 1968. But here, again, the carelessness of one jitney driver in running into

her (assuming that that is what happened) is not evidence that Eldon Avenue is an abnormally dangerous place in which to work.

(ii) Mamie Williams, an Assembler at the Eldon Avenue plant, applied for Sickness and Accident Benefits (as distinguished from Workmen's Compensation) on May 6, 1969. She stated in her application that she had been involved in an automobile accident at Van Dyke and Genoa (not in the Eldon Avenue plant area) on April 21, 1969, hurting her right knee, and had developed abdominal pain and diarrhea "for which hospitalization was recommended on May 1, 1969." She returned to work on June 2, 1969. On July 19, 1969, Mrs. Williams again applied for Sickness and Accident Benefits, again alleging that her disability resulted from the accident on April 21, when, she said, an automobile ran through a stop light and struck her. She said her disability involved her neck, right shoulder, right knee, and right leg. She said she had been disabled since June 20, 1969. Mrs. Williams submitted in support of her application an "Attending Physician's Statement" (Exhibit F, submitted herewith) signed by Dr. Raphael Cilento and dated July 19, 1969, in which he said he had treated Mrs. Williams from June 18 to July 19, 1969, for neck and back strain and

synovitis, an inflammation of membrane of joints. In answer to the question, "Did this sickness or injury arise out of patient's employment?," Dr. Cilento -- her doctor -- said "No."

The grievance in this case alleges that the Eldon Avenue plant "notified [Mrs. Williams] to return to work or be fired." On January 9, 1970, Aetna Life & Casualty Insurance Co., which carries Chrysler's sickness and accident insurance, sent Mrs. Williams a telegram asking her to report to Dr. Rojas at the Blain Clinic, 2141 East Jefferson, Detroit. On January 13, 1970, the Corporation sent her a form letter advising her, not that she should return to work or be discharged, but that she had been on leave and receiving benefits since June 20, 1969, and that if she did not report for work "or substantiate that your absence is for proper cause," her employment would be terminated. Dr. Leonidas Rojas, of the Blain Clinic, examined Mrs. Williams on January 13, 1970. He found that Mrs. Williams could return to work at any time. A copy of his report, marked Exhibit G, is submitted herewith. However, Mrs. Williams did not then return to work and, in accordance with the National Production and Maintenance Agreement between Chrysler and the UAW, she lost her seniority as of January 13, 1970.

Mrs. Williams later furnished a disability certificate dated March 20, 1970, saying she could return to work and placing no restrictions on the type of work she could do. Chrysler re-examined her and reinstated her on March 24, 1970. She died on May 14, 1970. Her death certificate, Exhibit H, submitted herewith, which issued following an autopsy, shows that the immediate cause of her death was uremia, from which she had suffered for three days, and that chronic pyelonephritis and diabetes mellitus may have contributed to her death. There was no evidence whatsoever that any "abnormally dangerous" condition at the Eldon Avenue plant or her wholly voluntary return to work three months after the Blain Clinic found her able to work contributed to her death in any degree.

(iii) The grievants allege, with respect to the death of Gary Thompson, that he "died as a direct result of unsafe conditions in the plant." The fact is that conditions in the plant had nothing at all to do with this tragic accident. There was no eyewitness to the accident, but the Corporation conducted exhaustive tests and experiments under precisely simulated conditions that, with the known facts, clearly show what happened.

At about 6:18 A. M. on May 26, 1970, Fred Hudson, a

Magnetic Crane Operator in the South Yard who was on his way to punch in for the 7:00 A. M. shift, saw Mr. Thompson on his jitney in the yard. The mast of the jitney was fully extended and the hopper, full of spiral steel scrap, was suspended over a gondola railroad car, into which Mr. Thompson was apparently in the act of dumping the scrap. At about 6:25 A. M., shortly before Mr. Thompson's quitting time, Otis Baker, one of Mr. Thompson's foremen, went to look for him and found Mr. Thompson's jitney and hopper turned over on its right side, with Mr. Thompson under the hopper and scrap.

When Mr. Baker found the jitney, its rear wheels were 17.5 feet, and the front wheels slightly farther, from the gondola car. The mast was fully extended, about 9'3". The engine was running and the transmission was in reverse gear. (Since the jitney has fluid drive and the engine was idling, the wheels were not turning.) It is apparent that after Mr. Hudson saw him, Mr. Thompson decided to dump his load of scrap at some part of the car other than that at which Mr. Hudson saw him. He backed away from the gondola car without lowering the mast and loaded hopper (this was contrary to rules governing the operation of jitneys) and turned the jitney so that, instead of being at right angles to the car, as it was when Mr. Hudson saw it, it was almost parallel with

the car. This maneuver apparently caused an imbalance that upset the jitney and its load, and Mr. Thompson jumped or fell under the loaded hopper. Annexed hereto, marked Exhibit I, is a sketch of the scene of the accident that John Dagenais, the Plant Safety Administrator at the Eldon Avenue plant, made on the date thereof.

In reply to the grievants' specific allegations concerning this accident, as set forth in their charge in Case No. 7-CA-7999 (pp. 2 and 3):

1. Mr. Thompson had received adequate training, first on small jitneys, then on the floor scrubber, then on larger jitneys, and finally on the two Clark 8,000-pound capacity vehicles that his department, No. 25, Janitors, used in removing sludge (very heavy material) and steel scrap from the plant.

2. The capacity of the jitney that Mr. Thompson was operating is 8,000 pounds. His load was about 4,050 pounds.

3. The course Mr. Thompson took was smooth and entirely free of obstructions. The surface of the area in which the accident took place (the "South Yard" of the plant) is concrete-filled steel grating and is free of holes, trenches, grades or obstructions.