DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 3 OF 16

FOLDER 29

EWSC CASE 5428 CHRYSLER

BRIEF 1 OF 2

4. Eldon Avenue has a Jitney Repair Department with three foremen, 16 full-time mechanics and two battery changers. Drivers are instructed to check their vehicles daily and to take defective ones, labeled with tags describing the defects, to the Repair Department. The jitney Mr. Thompson was using was not listed in the repair shop as one needing repairs. (An Alternate Chief Steward, who substitutes for the Chief Steward, was a regular operator of the two Clark jitneys, and had found no fault with them.)

5. The charge and the grievance herein allege that the jitney had faulty brakes. The hand brake was not hooked up. Jitney drivers rarely if ever have occasion to use hand brakes since the plant floor and scrap yard are entirely level. The foot brake on the left front wheel was 100% effective after the accident. The brake on the right wheel was only 80% effective, owing to the fact that, while the jitney was lying on its side, oil seeped out of the differential onto the brake drum. In any event, since the jitney obviously was backing up and turning when it tipped over, the condition of the hand brakes could not have contributed to the accident. The overhead guard on the jitney was proper and in good condition.

6. The releases on Roura hoppers are hard to

reach from the driver's seat. Operators have specially designed sticks with which they may easily reach the release catches, either from their seat or from the ground, and can do it much more safely than they could without the sticks.

In conclusion on this point, we should point out that employees had operated the Clark jitneys for about five years, using them to load scrap into gondola cars, as Mr. Thompson was doing, without a single lost-time accident. Furthermore, even if the jitney in question had been "abnormally dangerous," it would not have justified striking by any of the charging parties, none of whom was a jitney driver, or striking or picketing the entire plant.

(iv) The grievants evidently consider Department 75 as a horrible example of the "abnormally dangerous" working conditions in the plant. In their charge in Case No. 7-CA-7999, they assert that the following hazards existed:

> "1) Pools of oil on the floor at the foot of the women's lavatory; 2) loose fitting pinion boots on the Lub-Rite which fills up with hot kerosene (about 200 degrees) that splashes out on the face and the eyes; 3) ringbear girder #10-3289 has a clamp spring which winds up too tight during use and which has recently come close to clamping shut on the right hands of three separate men; 4) excessive noise and dust on the modern grinder; 5) pools of oil in

> P aisle between P-10 and P-12; 6) iron plate in aisle B by the Lub-Rite which catches the work-saver and whips it violently out of control; 7) badly bent conveyor hooks on the lines running from the modern grinder to the Lube-Rite and from the Lube-Rite to Department 79; 8) oil and dirt caked on the stairs of the men's lavatory #15; 9) skid boxes stacked 5 high in the gear bank (corporate safety rule is 4 high); 10) foremen who require employees to climb on and into these skid boxes looking for stock."

An inspection of Department 75 shortly after the grievants filed their charge showed the true facts to be as follows:

1. The "pools of oil on the floor at the foot of [the stairway leading to] the women's lavatory" consist of one pool, back of the stairway, being a shallow catchbasin in which the plant collects excess oil from a machine. It would be virtually impossible for anyone to step in it, even intentionally.

2. Lubrite compound, a liquid, is heated to 120 degrees. It is used to clean the teeth, but not the pinion (which is covered by a rubber boot), of pinion gears. The compound is washed off the gear teeth and boot with kerosene before the operator removes the boot. The kerosene is not hot, and is rinsed off before the operator removes the boot. Small amounts, less than an ounce, of diluted kerosene may collect in some boots. The operator removes the boot at waist

level and is in no danger whatsoever of getting kerosene in his face or eyes.

3. The charging parties alleged that ring gear grinder #10-3289 has a clamp spring that "winds up too tight during use" and that has recently come close to clamping shut on the hands of three separate men. The clamp spring cannot wind up during operation, being pre-set, and cannot clamp shut on the operator's hand. It has never done so.

4. Metal hoods and ventilators on the Modern grinders keep the noise and dust well within tolerable levels.

5. There never are "pools" of oil in any aisles. When oil, coolants or water wet the aisles, the affected area is immediately treated temporarily with an absorbent, non-skid compound.

6. A general foreman had the iron plate in Aisle B by the Lubrite replaced before the date of the charge in Case No. 7-CA-7999.

Because of my complaint

7. The plant replaces the hooks from the Lubrite to Department 79 every two or three weeks. It forbids employees to hang anything on bent hooks. About 3.5 miles of wire netting is under overhead conveyors in the plant.

Never replaced. I complained & was told they never do anything.

8. The stairs to the men's lavatory afford safe footing and hand rails.

9. No corporate rule forbids stacking skid boxes more than four high. Depending on their height, their weight and the height of the ceiling, they may be up to six high. They are so slotted into each other that they cannot slip off of each other but must be lifted off with fork-lift trucks.

10. Foremen do not require employees to climb on or into skid boxes looking for stock. The plant provides "extend-a-looks" with which employees can examine the interior of stacked skid boxes without leaving the floor.

Between January 1, 1968, and July 24, 1970, the plant had four "housekeeping" grievances from Department 75, and none involving safety. On January 8, 1968, the Union complained that one heater was not operating properly. On September 8, 1968, it complained that some windows were hard to operate. On May 17, 1969, it complained that lapping compound was on the floor in one area. On October 29, 1969, it complained of a wet floor in the Lubrite area, as a result of a leaking tank. Each of these grievances was either withdrawn or settled.

IV.

ELDON AVENUE'S SAFETY RECORD AND ITS PROVISIONS FOR THE HEALTH AND SAFETY OF EMPLOYEES ARE EXCEPTIONALLY GOOD.

We refer the Impartial Chairman to a letter that Mr. Miner wrote to him dated November 24, 1970, in connection with Appeal Board Case No. 5351-1970:9 (Jordan U. Sims), and for his convenience we will reproduce an updated version of it below.

First, however, we should describe briefly the Eldon Avenue plant. The plant proper covers 1,100,000 square feet, surrounded by an additional 498,000 square feet, exclusive of parking lots, that the plant uses for productive purposes, such as storage, railroad sidings and the like. As the Impartial Chairman doubtless knows, the plant is engaged primarily in machining metal parts for rear axles of most Chrysler-built automobiles, for which it is the sole source, and assembling the parts into completed axles.

The plant normally employs about 4,000 production workers. They operate about 2,600 machine tools of 170 different kinds, such as vertical and horizontal lathes; external, internal, surface, counter bore, rotary disc and snag grinders;

automatic screw machines; milling machines, hydraulic and mechanical presses; gas and electric jitneys and other vehicles; single- and multiple-spindle drill presses, and Bullard multimatic and continumatic machines. Some machines perform a series of operations. In ordering machines and other equipment, Chrysler's standard specifications require that the items it buys incorporate complete safety devices, such as guards for grinding wheels, two-hand and emergency buttons for presses, and every safeguard against possible injury to operators, and its Safety Administrators inspect new machines at the vendors' plants to insure compliance with Chrysler's safety requirements.

All employees receive a booklet, "SAFETY AND YOUR JOB," which emphasizes the importance to the individual, his fellow workers and his job of working safely at all times. (Exhibit J, submitted herewith.)

Notwithstanding all the precautions -- some of which we will mention later -- that Chrysler takes against accidents in its plants, many of which are required by law, it would strain anyone's credulity for us to say that the

Eldon plant, or any other industrial plant of Chrysler or any other company is or can be wholly free of hazards. It is a well-known fact, however, that work-related accidents constitute far less than half of those that occur in homes. Thus, the National Health Survey of the U. S. Public Health Service estimated the average number of work-related accidents in 1967, 1968, and 1969 was 8,910,000, while those occurring in homes was 20,266,000.* However this may be, there is clear evidence that the vast majority of industrial accidents result, not from deficient safety devices, but from carelessness, or a refusal to obey instructions, on the part of the injured employee or of a fellow-employee. One of the strictest rules, for example, requires all employees to wear safety glasses in production areas. But, notwithstanding the danger to themselves, employees often violate the rule and complain when foremen enforce it.

(a) One of the most reliable sources of comparative information concerning the frequency and severity of industrial accidents is "Accident Facts," published annually by the National Safety Council. The statistics that "Accident Facts" reports reflect the experience of companies

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* "Accident Facts," 1971 Edition, National Safety Council.

that are members of the Council in accordance with the Council's "Method of Recording and Measuring Work Injury Experience" and on uniform, standard forms. The Bureau of Labor Statistics of the United States Department of Labor publishes similar figures, which it bases on the experience of all firms in each industry, including those that are members of the NSC. A comparison of the frequency and severity of industrial injuries as reported by the NSC and the BLS, respectively, shows that the rate for both categories among NSC members, of which Chrysler is one, is much lower than that for all companies, as reported by the BLS. Thus, the frequency rate in 1968 of injuries to employees in the automobile industry whose employers are members of the NSC was 1.6 per million man hours, while the corresponding figure as reported by the BLS was 5.4 -- 30% higher. (NSC, "Accident Facts," 1969 Edition.)

As we have noted, the frequency rate of injuries among NSC members in the automobile industry in 1968 was 1.6 per million man hours of work. The frequency rate for all companies reporting to the NSC was 7.35. The frequency rate for Chrysler Corporation as a whole was 1.48, being .12 lower than the NSC figure for the automobile industry and 3.92 less than the BLS rate for the industry. The rate for Chrysler's basic manufacturing operations, consisting largely of machining and assembling heavy parts (engines, drive

mechanisms, gears, rear axles, and differentials) (Eldon Avenue is in the "basic manufacturing group") was 1.96, and the rate for Eldon Avenue was 1.72, being 46th in a list of 78 Chrysler plants.

Reports of the NSC covering the frequency rate of industrial injuries in 1969 was 8.08 per million man hours for NSC members in all industries and 1.67 for the automobile industry. The frequency rate for all industries reporting to the BLS in 1968 was 37.6, as against the NSC rate of 8.08. The BLS rates for the automobile industry was 6.1, as against the NSC rate of 1.67 and as against Chrysler's rate of 1.48, 1.96 for its basic manufacturing group and 1.26 for the Eldon Avenue Axle Plant.

In January 1970, Chrysler's frequency rate was .61 and Eldon Avenue's was 1.68. In February, Chrysler's frequency rate was .82 and Eldon Avenue's was 0. In March, Chrysler's frequency rate was .81 and Eldon Avenue's was 0. In April, Chrysler's rate was 1.20 and Eldon Avenue's was 0. In May, Chrysler's rate was 1.38 and Eldon Avenue's was 1.43. The accident involving the death of Gary Thompson accounted for Eldon Avenue's entire frequency rate in May 1970.

Thus, the five-month frequency rate for Chrysler to May 31, 1970, was 1.17 and for Eldon Avenue was .92.

The National Safety Council recognizes excellence in plants' safety records by issuing awards. On November 12, 1969, the Council awarded to the Eldon Avenue Axle Plant its National Award of Merit, due to the plant's working 2,172,764 man hours without a lost-time accident between June 12, 1969, and September 8, 1969. This record was broken when an employee who was operating a machine dropped a part on his hand. Eldon Avenue received an award for the period from January 28, 1970, to April 30, 1970, during which it operated 2,048,898 man hours without a lost-time accident. The record was interrupted because a machine operator who got dust in his left eye on April 30 developed conjunctivitis in May, causing him to lose time. There was no lost-time accident at Eldon Avenue between April 30, 1970, and the death of Gary Thompson on May 26, 1970.

(b) The severity of lost-time accidents at the Eldon Avenue plant, as well as the frequency rate, compares favorably with the severity rates for industry generally, the automobile industry, and Chrysler Corporation.

In 1969, the severity rate per accident for all

industry, according to NSC figures, was 640 days. The severity rate for the automobile industry was 256 days. The rate for Chrysler Corporation was 194 days. The rate for Eldon Avenue was 126 days per million man hours worked -- 68 days less than for the Corporation as a whole. The BLS severity rate in 1969 was 70% higher than the NSC rate for that year. ("Accident Facts," 1971 Edition, National Safety Council.)

(c) Chrysler has in its corporate and plant organizations highly qualified persons whose sole concern is assuring safe and healthful practices, equipment and working conditions for all employees.

On the corporate level, Neil McCallum is the Safety Director. He is a graduate in mechanical engineering and has had 22 years' experience in safety work. He has been with Chrysler since 1959 and before that was Safety Director of the Hydramatic Division of General Motors Corporation. He is thoroughly familiar with all phases of automobile manufacture and with the safety and health problems they present. Mr. McCallum has under him three Safety Specialists, B. G. Moxley, J. R. Crawford, and Fred Havrilla, who have engaged in safety work for a variety of companies, particularly in metal-working industries.

Among them, they have had about 58 years' experience in safety work. Their principal duty consists of assuring compliance with corporate standards in all plants. They audit each individual plant's safety activities and analyze their records, both as to frequency and severity of disabilities. All the Safety Specialists, as well as Mr. McCallum, are members of the American Society of Safety Engineers.

J. J. Hayes is the Industrial Security and Safety Manager for Chrysler's Basic Manufacturing Division, consisting of five plants -- the Eldon Avenue Axle Plant, the Huber Avenue Foundry, the Detroit Forge Plant, the Indianapolis Foundry, and the New Process Gear Plant. His headquarters are at the Eldon Avenue plant. At each of these plants there is a Safety Administrator. At Eldon Avenue, this is John Dagenais. He was a Methods and Standards Engineer at the Conant and Eldon Avenue plants from 1957 to December 1962, and in that capacity became familiar with all production operations in the plants. He has been Safety Administrator at the Eldon plant for more than nine years. He regularly addresses the plant staff on safety matters and first-line supervisors must talk to their subordinates about safety measures in their areas at least once a month.

Numerous signs and posters in the plant, on bulletin boards, hanging from the ceiling, and affixed to machinery and equipment, constantly remind employees to work safely. For example, fork-lift trucks (jitneys) and other in-plant gas and electric motor vehicles have affixed to them a sticker in the form of Exhibit K submitted herewith. Large motorized floor scrubbers keep the plant exceptionally free of hazardous footing. The plant uses large amounts of Sol Speedi-Dry to absorb at once oil or water that may spill on the floor, until janitors clean it up.

(c) The Corporation provides, free of charge, a great variety of devices to protect employees against injury, according to the particular kinds of work they from time to time may do -- 24 different kinds of gloves (rubber, leather, plastic, insulated, canvas, gauntlets, etc., etc.) -- on some operations employees must wear gloves, on others, gloves constitute a hazard and are forbidden; five kinds of boots with safety toes and arches; prescription and plain safety glasses, which are mandatory for all employees, including office personnel when they are in manufacturing areas; face shields; earplugs and earmuffs for employees in noisy areas; hard hats; rubber aprons for wet work; flameproof canvas aprons for other work. Vendors sell safety shoes at the plant at reduced prices.

(e) Aside from the Safety Specialists and the other safety practices, devices, and conditions the plant requires or provides for the protection of employees, there are at the Eldon Avenue plant, as at the other plants, management representatives who have, as an important part of their duties, discovering potentially hazardous conditions, both through their own observation and through reports of hourly rate employees. Eldon Avenue has 15 Superintendents, 40 General Foremen, and 193 Foremen, whose functions include keeping their areas clean and safe. The plant has one Labor Relations Supervisor and four Labor Relations Representatives who spend much of their time in the plant discussing allegedly dangerous conditions with representatives of the Union.

(f) The Corporation has at Highland Park a fully-equipped Industrial Hygiene Department, whose services are available on request to plant safety, medical, and personnel departments with respect to such matters as ventilation, air pollution, noise, dermatitis, toxicity of materials, sanitation, and other aspects of health and hygiene. They make periodic surveys of all plants.

(g) The UAW itself has ten Local Union Officers, four Plant Shop Committeemen, and 16 Chief Stewards in the plant. All of these officials, like Chrysler's own representatives,

are especially alert to possibly dangerous conditions. They are quick to bring them to management's attention and are insistent on the plant's correcting unsafe equipment, practices or conditions.

Under the National Production and Maintenance Agreement between Chrysler and the UAW, the Union, after following the grievance procedure the agreement prescribes, is free to strike over working conditions -- not merely those that are "abnormally dangerous," but any that the Union deems unfair or unreasonable. The Impartial Chairman does not have power or authority to rule on such complaints. It is inconceivable that in these circumstances the Union or the Corporation would allow "abnormally dangerous" conditions to exist in the plant.

(h) The Eldon Avenue Axle Plant has a fully-equipped Medical Department. Its personnel includes a full-time physician on the first shift, two registered nurses on the first shift, and one registered nurse on each of the second and third shifts. The department consists of an emergency room and six examination rooms. Its equipment includes an X-ray machine, an ambulance containing a stretcher and first-aid materials, drugs, medications, beds, and other paraphernalia for diagnosing and treating injuries and illnesses. Although the department's principal function is to treat injuries that occur in the plant,

it frequently treats, also, injuries that occur outside the plant and ailments that have no connection with the patient's work. When the doctor is not present, the nurses have full authority, in their own discretion, to send employees to hospitals (usually Henry Ford Hospital) by ambulance, company car or cab, but in any event at the Corporation's expense. The plant's Medical Department may call on the medical facilities at Highland Park, which has four physicians and six nurses, for advice, service or assistance.

(i) Plant Protection Officers at the Eldon Avenue Axle Plant all have received first-aid training and, particularly, training as to when and how to handle injured persons safely.

(j) Chrysler is a self-insurer under the Workmen's Compensation laws. It thus has an economic, as well as a humanitarian, motive for taking every reasonable means to protect the health and safety of its employees. The Union may say that Chrysler's being a self-insurer may lead to a tendency on its part to understate the frequency and severity of accidents in its plants. But if it were not a self-insurer, it would have to buy insurance, in which case its experience rating would determine the cost

of the insurance. Furthermore, it is the State, not Chrysler, that determines in questionable cases whether or not an employee is injured and if so, how badly, and whether or not the injury was work-connected. Nor can one presume that insurance companies are more liberal with their money than Chrysler is.

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 ABNORMALLY DANGEROUS PLACE FOR WORK.

We think it worthwhile to examine closely the relevant language of Section 502. It provides that nothing in the National Labor Relations Act

> "...shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act;....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 Act."

This language does not apply to the case at bar because the grievants not only quit their labor but sought to induce others to quit their labor. This fact is self-evident and, as we understand, admitted.

Moreover, even if the language applied to picketing, it would not exculpate the grievants, who allege in their grievance and in their charge that they <u>believed</u>, contrary to the facts and contrary to the beliefs of all other Eldon

employees, that the Eldon plant was "abnormally dangerous." They purport to quote Section 502 of the National Labor Relations Act as saying that "the withholding of labor in a good faith belief of abnormally dangerous working conditions does not and cannot constitute a strike."

With all due deference to Mr. Adelman and grievant Taylor (who is an LL.B.), this is not what the statute says.

As we have said, Section 502, in appropriate circumstances, protects striking, not picketing. But even if it protected picketing, it would do so only if the picketing were in good faith "because of abnormally dangerous conditions for work" at the employees' place of employment.

It is well settled that, as the National Labor Relations Board held in Redwing Carriers, Inc., 130 NLRB 1208 (1961), "the term [abnormally dangerous conditions for work] contemplates, and is intended to insure, an objective, as opposed to a subjective, test" and that the controlling factor "is not the state of mind of the employee or employees concerned, but whether the actual working conditions shown to exist by competent evidence might in the

circumstances reasonably be considered 'abnormally dangerous.'" 130 NLRB at 1209.

In NLRB v. Fruin-Colnon Construction Corp., 330 F. 2d 885 (CA 8, 1964), the court held, as the Board holds, that an employee's "good faith belief" that abnormally dangerous conditions exist does not protect him. The court said:

> "We clearly find that the effect of Section 502 in its application to the case at hand is that if employees acting concertedly leave their jobs believing in good faith abnormally dangerous conditions prevail, they run the risk of discharge for engaging in a 'strike' in contravention of a 'no strike' clause in their collective bargaining agreement or for participating in the unprotected activity of dictating to management their own terms and conditions of employment, should proof later of the physical facts fail to support their prior belief." 330 F.2d at 892.

Accord: Curtis Mathes Manufacturing Co., 145 NLRB 473 (1963); Stop & Shop, Inc., 161 NLRB 75 (1966).

In Myers Indus. Elec., 177 NLRB No. 52, 71 LRRM 1425 (1969), an employer who was installing wiring and electrical equipment on a tunnel project assigned only one electrician to work on the swing and graveyard shifts. Contending that such assignment constituted an abnormally dangerous working condition, all the employer's electricians

refused to report for work. The next day the employer sent termination notices to all of them, stating that they had quit and advising six of them that they were "not subject to rehire on this job." The allegedly abnormally dangerous working condition involved work the electricians did on a rib cable that carried 440 volts. The employer's contract with the IBEW required him to assign not less than two journeymen "as a safety measure" on all energized circuits of 440 volts or over. Finding that no abnormally dangerous working conditions existed despite the breach of the "formal" safety provision, the Board said:

> "Whether conditions in the tunnel were abnormally dangerous is to be determined by an objective, not a subjective test. See Redwing Carriers, Inc., 130 NLRB 1208, 1209, 47 LRRM 1470. Working in tunnel construction is dangerous, and it is particularly dangerous to work as an electrician in the wet and damp conditions that may exist in a tunnel. However, working conditions at the time of the walkout were not abnormally dangerous. It is noted that work on the tunnel was done under the close supervision of the U. S. Army Corps of Engineers. Inspections were conducted by the Corps of Engineers, the State of Montana and the U. S. Bureau of Mines, and all reports indicated that safety conditions were satisfactory. The General Counsel called as a witness the person responsible for enforcing the safety requirements of the Corps of Engineers, and this witness testified that it was not abnormally dangerous for an electrician to work alone in the tunnel on circuits of 440 volts or higher. It is found that the 'safety' provisions of the contract breached by the employer

> were no more than 'formal' and that no abnormally dangerous working conditions existed at the time of the walkout." 71 LRRM 1425-1426.

Accordingly, the Board dismissed the complaint.

Here, far from being "abnormally" dangerous, working conditions at the Eldon Avenue Axle Plant clearly are abnormally safe, by State, national, corporate, and other relevant standards.

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.

On June 11, 1970, almost simultaneously with the filing of the original grievance in the present case, the grievants here -- Messrs. Taylor, Chandler, Edwards, and McKee -- through their attorneys, Messrs. Philo, Maki, Ravitz, Glotta, Adelman, Cockerel and Robb, filed with the Regional Office for Region 7 of the Labor Board a charge alleging that Chrysler had violated Sections 8(a)(1) and (3) of the National Labor Relations Act, as amended, by discharging them. The details of the charge (Exhibit A, submitted herewith), on the letterhead of Messrs. Philo,

et al., are, in substance and in much of their language, identical to the grievance in the present case.

The charge alleges the deaths of Gary Thompson, Rose Logan and Mamie Williams. After listing ten non-existent unsafe conditions in Department 75 of the plant, which we have discussed, supra, the charge (p. 4) alleges that "[t]o combat the abnormally dangerous conditions which prevail at the plant, a number of concerned employees formed the Eldon Workers' Safety Committee," which, according to literature it distributed, included the four charging parties and five other Eldon employees. It included, also, a former employee, Jordan U. Sims, whom the plant had discharged on May 6, 1970, for, as the Impartial Chairman found in Case No. 5351-1970:9, "participating in and giving leadership to an unauthorized stoppage of work accompanied by picketing at that plant from Friday May 1 to Monday May 4, 1970, in violation of Section 5 of the National Agreement."

The charge in 7-CA-7999 alleges that, after formation of the Eldon Workers' Safety Committee, its "members initiated a campaign to attempt to educate other workers on the conditions that existed...by composing and circulating leaflets at the Eldon Plant." After Gary Thompson died, the charge says (p. 5), the Committee agreed "that a more

decisive course of action would have to be pursued." Therefore, it says, "on May [27], 1970, the 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." It says the "pickets were maintained for all three shifts on May [27], 1970 and the last shift on May [28], 1970.* The Committee "attempted to persuade their fellow workers that the only way to combat these conditions was to withhold labor."

In their charge in Case No. 7-CA-7999, as they do in the present grievance, the charging parties and their lawyers completely misread and misinterpret the plain language of Section 502. While in some circumstances, not present here, the Act protects a "quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment," it does not say that it protects picketing or any other activity whose aim is to persuade other employees to quit

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

their labor because of what the pickets, not the other employees, consider, rightly or wrongly (and wrongly, in this case), "abnormally dangerous conditions for work" at the other employees' work stations.

The charge in 7-CA-7999 admits that the four dischargees were picketing, which is as violative of Section (5) as striking. It says the charging parties were "discharged for their participation in activities such as the picketing."

The Regional Director of the National Labor Relations Board dismissed, as to all four charging parties, the grievants herein, the charge in 7-CA-7999. He did this after a thorough investigation of the facts, with supporting statistics regarding the frequency and severity of accidents at the Eldon plant as compared with data from industry generally, the automobile industry, and other Chrysler plants, medical reports, photographs, diagrams, and copies of the reckless, outlandish, vicious, and irresponsible falsehoods the Eldon Workers' Safety Committee, ELRUM, and the Eldon Wildcat published in their handbills and on their picket signs denigrating fellow employees, black and white; the UAW, Chrysler, and other automobile manufacturers.

In their charge, the dischargees reflect a belief, as they do in their present grievance, that if they "in good faith" thought working conditions in the plant were abnormally dangerous, Section 502 protected them. We have shown that this is not the case.

The Regional Director dismissed the charge in Case No. 7-CA-7999 on September 8, 1970. (Exhibit L, submitted herewith.) He found, among other things, that "these four individuals picketed and handbilled the Employer's Eldon Avenue Gear and Axle plant," and that two of them struck. He found that "the purpose of the picketing was to encourage other employees" to strike. He cited Section (5) of the Agreement and found that the conditions precedent to a strike, which it prescribes, had not been met. He concluded that while safety conditions at the plant were not of "maximal quality," they were not "abnormally dangerous." In conclusion, he said:

> "In summary, it was felt that the evidence was insufficient to establish that the safety conditions at the Eldon plant, which employs several thousand employees and engages in heavy fabricating and machinery work, were of such a nature as to justify a finding that the conduct of the Charging Parties was protected by Sections 8(a)(1), (3) and Section 502 of the Act."

On appeal by the charging parties, after they received an extension of time until October 5, 1970, in which to appeal, the General Counsel, on March 15, 1971, sustained the Regional Director. The Regional Director and the General Counsel thus passed on every factor the present grievance involves. All of the grievants violated the all-important Section (5) by picketing. Two of them "absented themselves from their work" -- i.e., struck -- on the pretext that "abnormally dangerous" conditions for work existed, not on their jobs, but on other people's jobs. They did this without following the procedure that Section (5) requires. They did it notwithstanding that conditions in the plant, and, more specifically, on their jobs, were not abnormally dangerous. And they did it in derogation -- indeed, in contemptuous defiance -- of the bargaining rights of their exclusive bargaining agent and its duly elected officers and representatives.

We do not contend that the Board's dismissing a charge necessarily precludes arbitrating the subject matter of the charge, or that a ruling of the Board that is based on the same set of facts that is before the arbitrator, but involves different principles, is binding on the arbitrator. But the present case involves not only the same people

and the same set of facts, but the grievants have deliberately and explicitly elected to rest their defense on the precise principle that was before the Board in Case No. 7-CA-7999, i.e., the applicability of Section 502. There is very respectable authority for saying that in these circumstances the arbitrator should treat the matter as res judicata. Middle States Tel. Co., 44 LA 580 (John Day Larkin, 1965); Kennecott Copper Corp., 32 LA 646 (Arthur M. Ross, 1959); Burgmaster Corp., 46 LA 750 (Melvin Leonard, 1966); Walker Stainless Equip. Co., 40 LA 381 (Thurman M. Sanders, 1962); Bluebird Knitwear Co. v. Livingston, 54 LRRM 2476 (1963), modified 54 LRRM 2749 (1963). Cf. Allegheny Ludlum Steel Corp., 46 LA 890 (Saul Wallen, 1966). In any event, we believe that the arbitrator should give great weight to the Board's final decision that the facts do not present even a colorable case. Reciprocity, if nothing else, demands no less. Spielberg Manufacturing Co., 112 NLRB 1080 (1955).

As we have noted, the Impartial Chairman, also, already has passed on one aspect of this case. In Appeal Board Case No. 5351:1970:9, the Impartial Chairman found that on May 27 Jordan U. Sims joined Messrs. Taylor, Edwards, Chandler and McKee in "picketing" the plant in violation of Section (5), and regarded this as a further reason for denying Mr. Sims's grievance.

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.

In the Sims case (Appeal Board Case No. 5351:1970: 9), the Union tried to justify the striking and picketing that that case involved by saying that "the Management of the Eldon Avenue Plant was itself seriously in violation of agreements and commitments made to the Union regarding safety and cleanliness in the factory." As to this contention, the Impartial Chairman said (and his reasoning applies here):

> "...Assuming, without holding that the Eldon Avenue Management was violating its agreements with the Union, the National Agreement affords procedures for the obtaining of relief without resort to prohibited disruptions of production and employment. Indeed, as the evidence shows, the Union invoked certain of those procedures by calling and participating in Special Conferences as contemplated by Section (33) concerning complaints that Management was not living up to its promises. It was within the power of the Union to pursue more forceful avenues in support of such complaints if it deemed advisable. I take it from the fact that the Union did not seek relief from the Appeal Board and did not resort

> to legitimate strike action within the limits permitted by the Agreement, that the Union did not at the time think that the behavior of the Eldon Avenue Plant Management was as derelict as the Union now contends. Viewed in this light the argument now being discussed amounts to a contention that Grievant should be excused or dealt with lightly for engaging in prohibited strike activity because of conduct on Management's part which the Union itself regarded as properly a matter which could be resolved by negotiation...."

So, here, if and when conditions exist in a plant, whether unsafe or merely disagreeable, the Union can and does deal with the matter through established procedures. Individual employees have no right to follow their own procedures, by striking and picketing and trying to induce others to strike and picket, as the grievants did here.

Under Chrysler's contracts with the UAW, the Impartial Chairman invariably has sustained the discharge of employees, whether members of the rank and file or union officials, and frequently those with far more seniority than the present grievants have, where, as here, the evidence showed they violated Section (5) of the contract. See: Appeal Board Cases Nos. 904 and 905 (April 11, 1952), 814 (May 29, 1951), 814B (June 22, 1951), 495 (October 6, 1947), 1706 (January 28, 1957), 2064 (April 25, 1958), 1028 (November 23, 1953), 96 (March 16, 1945), 3371 (December 29,

1960), 126A (March 16, 1945), 906 (April 11, 1952), 1611 (November 9, 1956), and 5428-70:482, supra. We submit that the Impartial Chairman should not reverse those cases and should not interfere with the Corporation's discretion in such cases as the present one except on a clear showing of arbitrariness or capriciousness on the part of the Corporation or of innocence on the part of the dischargee.

It is highly significant that since Chrysler discharged Jordan U. Sims and the grievants in this case and the Impartial Chairman sustained the discharge of Mr. Sims, there has been no substantial work stoppage or picketing, as distinguished from handbilling and demonstrating by outsiders, at the Eldon plant. It is a relevant consideration that this case has been ripe for arbitration for more than a year -- since September 21, 1970.

SUMMARY

1. The Eldon Avenue Axle Plant is not an abnormally dangerous place for work. On the contrary, it is an abnormally safe plant.

2. The grievants have not shown, or even claimed,

that their working places in the plant are dangerous in the slightest degree.

3. There is no dispute that Messrs. Chandler and Taylor struck in violation of Section (5) of the contract, or that all four grievants picketed in violation of the contract. The contract makes no distinction between these two violations, of which, in this case, the second, involving all dischargees, was at least as serious as the first, if not more so.

4. The grievants thus usurped the functions of their exclusive bargaining agent, which in itself is cause for discharge.

5. Even when abnormally dangerous conditions exist, Section 502 of the National Labor Relations Act exculpates only a "withholding of labor," not picketing or inducing others to withhold their labor.

6. To invoke Section 502, one must show that abnormally dangerous conditions actually existed, not merely that he believed, even in good faith, that such conditions existed. (Here, the facts show that the grievants acted in bad faith and that thousands of other employees -- many with far more seniority and far better knowledge of conditions in

the plant than the grievants had -- ignored their highly inflammatory pamphleterring and picketing.)

7. By reason of NLRB Case No. 7-CA-7999, this case is res judicata as to the fact of striking and picketing, the allegedly abnormally dangerous working conditions, and the applicability of Section 502.

8. The Impartial Chairman has held that, in such a situation as the grievants allege here, they should seek a remedy through their bargaining agent, not through self-help.

9. The Impartial Chairman ought to deny, as to all grievants, this grievance which has been ripe for arbitration since September 21, 1970.

CONCLUSION

FOR EIGHTEEN MONTHS THE GRIEVANTS HAVE RESORTED TO EVERY MEANS THEY COULD CONCEIVE OF IN ORDER TO GET THEMSELVES REINSTATED IN WHAT THEY CLAIM TO BE AN ABNORMALLY DANGEROUS PLANT. THIS IS CLEAR EVIDENCE OF THE FALSITY OF THEIR GRIEVANCE AND OF THEIR COMPLETE BAD FAITH IN MAKING IT AND

IN ENGAGING IN THEIR ACTIVITIES OF MAY 27 AND 28, 1970. THEY HAVE SHOWN THEMSELVES TO BE BORN TROUBLEMAKERS, ANTI-CHRYSLER, ANTI-UAW, AND WITHOUT THE SLIGHTEST CONSIDERATION FOR THE TRUTH OR FOR THEIR FELLOW WORKERS. ONE RARELY ENCOUNTERS A CASE THAT IS SO WHOLLY LACKING IN MERIT OR IN MITIGATING CIRCUMSTANCES AS THIS DELIBERATE BREACH OF ONE OF THE CONTRACT'S BASIC AND MOST IMPORTANT CLAUSES PRESENTS.

CHRYSLER CORPORATION

November 30, 1971.