DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 3 OF 16

FOLDER 30

EWSC CASE 5428 DISCUSSION

DEC 1971

December 21, 1971

Appeal Board of the:

Chrysler Corporation

and

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America

Case No. 5428-1971:5

Discipline: Picketing; Abnormally dangerous working conditions

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DECISION BY GABRIEL N. ALEXANDER, IMPARTIAL CHAIRMAN

Original Grievance

Local Union: No. 961
Plant: Eldon Avenue Axle
Grievance No. 70-462

Date Presented: October 5, 1970

"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 condition 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 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 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 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 ingnorance 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, 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 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 highhanded arrogance we can only describe as contemptible.

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

Statement of the Case

The quoted grievance protests the discharges of employes John Taylor, James Edwards, Alonzo Chandler and Robert McKee in the circumstances hereinafter set forth. The Union asks the Chairman to consider separately the requests that the several discharges be rescinded or modified.

The background circumstances are the same as those noted in Appeal Board Case 5351-1970:9. In 1970 the Eldon Avenue Axle Plant was the scene of one unauthorized work stoppage on April 15-19, and another on May 1-5. A dissident employe organization known as ELRUM (Eldon Revolutionary Union Movement) made its presence known by handbills and other means. ELRUM damned with equal fervor the behavior of representatives of the UAW and Chrysler. A publication entitled the "Eldon Wildcat" was circulated on several occasions at those times. Its authors are undisclosed. In one issue it recorded with approval the resort to unauthorized stoppages as a means of dealing with grievances. A third dissident organization the Eldon Worker's Safety Committee was formed by some employes. The Unions Statement refers to it in part as follows,

"Following the wildcat strike of May 1 to 4...a group of secondary Union leaders and rank file members formed the Eldon Worker Safety Committee. This Committee was comprised of the following employes: George Bauer, John Moffett, Jordan 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... 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 employes.

"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.

"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."

Between May 11 and May 25 two handbills (Union Exhibits C and D) were printed and disseminated by that Safety Committee, publicizing the proposition that Eldon Plant employes "have the right, under law, to refuse to work under 'abnormally dangerous conditions'...We can walk out anytime we've had enough of Chryslers inhumane treatment of its workers and the law will protect us." (Union Exhibit C). The handbills describe a number of machines or work stations as involving "abnormally dangerous conditions."

About 6:30 a.m. on May 26, 1970, employe Gary Thompson, a jitney driver, was killed in an accident during the course of his work. The accident was not witnessed by anyone. Managements subsequent investigation led it to conclude that Thompson had backed and turned his hopper equipped jitney away from a railroad car while the hopper loaded with scrap was fully extended (about 9 feet) above the jitney, contrary to safety rules, and the jitney had overturned and dumped its load of scrap on the employe in the maneuver.

During the afternoon or evening of May 26 Grievants and other members of the Eldon Worker's Safety Committee met with Attorney Glotta. At that time they agreed to pursue what their attorneys later described as "a more decisive course of action." (June 10, 1970 NLRB "Charge Against Employer", Corporation Exhibit A.) On the next day May 27, the Safety Committee caused picketing activity to be conducted at several entrances to the Eldon Avenue Plant grounds. Such activity was manifested at various times during the whole of May 27 and during part of May 28. Each of the Grievants together with other persons most of whose identities are undisclosed to me walked one or another of the several picket lines on one or more occasions during those two days.

On May 27 and 28 two more handbills were disseminated to Eldon Plant employees. (Union Exhibits E and F.) Both carry captions and subscripts identifying them as publications of the Eldon Worker's Safety Committee. The first, dated May 27, recites in part,

> "The Eldon Workers Safety Committee has called this work stoppage to halt the abnormally dangerous working conditions at Eldon. Every worker in the plant is involved:
> UNSAFE FOR ONE, UNSAFE FOR ALL."

and exhorts workers to

"JOIN THE FIGHT. DONT WORK UNTIL ELDON IS A SAFE PLACE FOR ALL OF US TO EARN OUR LIVING."

The second, dated May 28, describes the stoppage on the previous day; asserts the importance of continued refusal to work as long as Management maintains certain enumerated unsafe conditions, such as jitneys with no brakes, floors covered with grease and oil, etc.; and reiterates the proposition,

"WE HAVE A RIGHT TO REFUSE TO WORK UNDER THESE OUTRAGEOUSLY DANGEROUS CONDITIONS. THE NATIONAL LABOR RELATIONS ACT SUPERCEDES ANY AGREEMENT BETWEEN THE UNION AND THE COMPANY..."

As a consequence of the disruption axle production in the Eldon Avenue Plant fell below schedule by about 2,100 units. Percentage of absenteeism for the five consecutive shifts beginning with the day shift on the 27th was, respectively, 14.6, 52.0, 16.9, 14.0, and 9.8.

On May 28 Management notified the Grievants individually that they were discharged for their participation in unauthorized picketing of the plant in violation of Section (5) of the National Agreement.

Grievants have pursued two lines of action seeking relief from their discharges. On June 5, 1970 through the Union they caused to be presented the instant grievance. On June 11, 1970, through their attorneys, they caused to be presented to the National Labor Relations Board a charge that Chrysler had violated the National Labor Relations Act, more specifically that their several discharges constituted reprisals by Chrysler for the exercise by Grievants of rights guaranteed to them by Sections 7 and 502 of the Act.

After making his investigation, the Regional Director of the NLRB refused to issue a complaint against Chrysler. In his summary report dated September 8, 1970 he recited that the conduct of the Grievants, "...was in clear violation of the no strike clause (Section 5 of the Agreement) and would normally constitute conduct that is not protected by the Act," and that "the evidence was insufficient to establish that the safety conditions of the Eldon Avenue Plant...were of such a nature as to justify a finding that the conduct of...(Grievants) was protected by Sections 8 (a) (1), (3) and Section 502 of the Act." Grievants took an appeal

to the NLRB General Counsel from the ruling of the District Director. That appeal was denied on March 15, 1971.

In these Appeal Board proceedings the burden is on the Corporation to convince the Chairman (a) that Grievants gave cause for disciplinary action, and (b) that the discipline imposed is just and reasonable. To satisfy such burden the Corporation advances the following principal contentions: I. Grievants were the ring leaders of the striking and picketing that occurred on May 27 & 28, 1970. II. Working conditions at the Eldon Avenue Plant were not abnormally dangerous and Grievants belief that they were, even if such belief was in good faith, which it was not, would not protect their conduct. III. The safety record, and provisions for health and safety of employes, at the Eldon Avenue Plant are exceptionally good. IV. Section 502 of the National Labor Relations Act does not excuse Grievants activities. The Board has so ruled. The Chairman should reach the same conclusion. V. Discharge is the usual and proper disciplinary action where, as here, employes resort to activity prohibited by Section (5) of the Agreement, and the Chairman should not reverse or modify the action here at issue.

On behalf of Grievants requests for relief the Union advances the following principal contentions: I. Grievants intended to, and in fact did no more than, peacefully demonstrate to protest unsafe and hazardous working conditions. II. Grievants acted in good faith under advice of counsel that their demonstration activities were protected by the National Labor Relations Act. III. Grievants behavior did not constitute either a "strike" or "picketing" within the intended meaning of Section (5) of the Agreement. It was only a "demonstration" publicizing their belief that working conditions at the plant were abnormally dangerous. IV. While Grievants would have been better advised to conduct their demonstration under the umbrella of the Union contract, their behavior in light of all the circumstances did not constitute cause for discharge, particularly in view of the comparatively poor safety and cleanliness conditions which had existed for many months in the Eldon Avenue Plant.

Discussion and Conclusions

1.

Discussion will be directed to three principal questions: (a) Did Grievants conduct constitute violations of Section (5) of the 1967 National Production and Maintenance Agreement? (b) Does

Section 502 of the National Labor Relations Act have any effect on the outcome of the instant grievance? (c) On all the facts were the discharges or any of them unjust?

2.

Section 5 of the National Agreement of 1967 unconditionally prohibits "any sit-down, stay-in or any curtailment of work or restriction of production or interference with production." It conditionally prohibits or limits taking part "in any strike or stoppage" and "picket(ing)." Striking and picketing is wholly prohibited as to matters over which the Appeal Board has jurisdiction, and is permitted with respect to other matters only when the International Union gives specified notice of strike authorization and other procedural conditions have been fulfilled. Section (7) of the Agreement expressly confirms the Corporations "...right to discipline any employe taking part in any violation of Section (5)..."

The evidence proves beyond doubt that Grievants stopped working themselves and by the use of picketing and handbilling procedures sought to induce other employes to refrain from working. The Union contends that what Grievants did ought not to be regarded as "picketing" within the meaning of Section (5), but rather should be characterized as a peaceful "demonstration" and exercize of their constitutional rights to speak freely. I reject that line of reasoning. It is true that the evidence does not prove that any Grievant resorted to force to prevent or interfere with entrance to plant property by others, but it is also true, indeed admitted, that in accordance with their own joint plan Grievants walked or paraded in picket line manner while carrying placards on sidewalks and streets at the entrances to the plant grounds. In the context of prior and contemporaneous events at the Eldon Avenue Plant it may not reasonably be argued that what Grievants did on May 26, 27 and 28 was something other than to plan and engage in an unauthorized stoppage and picketing of the kind prohibited by Section (5).

The Union calls my attention to the opinions of the United States Supreme Court in Amalgamated Food Union vs. Logan Valley Plaza, 391US308, (May 20, 1968) dealing with the right of a Union to peacefully picket on shopping center premises. The opinions discuss constitutional free speech rights in connection with picketing which is not prohibited by contract, a matter only distantly related to the issue before me. The Union seems to be implying that the promises not to cause or permit picketing set forth in Section (5) of the National Agreement should be declared to be

meaningless because of constitutional protections of free speech. I know of no valid authority for that proposition.

Section (5) of the National Agreement does not distinguish between peaceful and violent picketing. It prohibits the Union and employes from any and all picketing of any plant or premises of the Corporation unless and until certain conditions are fulfilled. That clause should be construed so as to afford the Corporation freedom from activity in the nature of picketing where the purpose or effect thereof is to interfere with normal operations of Chryslers plants, offices or other establishments. The Chairman is not here concerned with picketing or other concerted activity at times or under circumstances when the National Agreement does not forbid it. In this Opinion he is dealing with a cessation of work by Grievants and their picketing activities at a time when they were under contractual obligations as set forth in Section (5). The finding must be that Grievants conduct violated Section (5).

3.

The next question is how, if at all, Section 502 of the National Labor Relations Act affects the disposition of this appeal.

Section 502 of the Act recites in relevant part,

> "...nor shall the quitting of labor by an employe 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."

As previously mentioned Grievants sought (and were denied) relief from the National Labor Relations Board on the strength of Section 502. In these Appeal Board proceedings also the Union relies on that Section as a basis for its position.

The Corporation does not contend that the Chairman is without jurisdiction to consider the impact of Section 502 of the Statute. It says (at page 55 of its Statement),

> "We do not contend that the Boards 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 Corporation argues that the Chairman ought to reject the Unions arguments based on that section. It asserts,

> "...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 ...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 (citing arbitration decisions). In any event we believe that the arbitrator should give great weight to the Boards 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."

My study of the Unions arguments, written and verbal, submitted to me at the hearing, leads me to believe that the Union is not relying here on the exact same principle that Grievants sought to invoke before the National Labor Relations Board. As I understand the Union, it has abandoned the contention that Grievants had statutory right to cease work and to exhort others to cease work do the same by placards, handbills and pickets, and argues here only that Grievants were motivated to and did engage in such activity in accordance with a good faith belief that they had such a legal right. The Union appears to accept as final the NLRB decision as to the meaning and applicability of the Statute to the circumstances, and argues only that the Chairman should give Grievants some relief from their discharge penalties because they relied in good faith on the erroneous advice of counsel as to their legal rights.

The Unions argument that Grievants should be here afforded some relief because although admittedly wrong under the Statute they acted in good faith, is not persuasive in view of other circumstances. Grievants were members of a bargaining

unit, the exclusive representative of which is the United Automobile Workers. Grievants were aware of the commitment expressed in Section (5) of the National Agreement prohibiting the UAW and bargaining unit employees from walkouts, stoppages and picketing. The Eldon Workers Safety Committee was created because of dissatisfaction with the activities of the UAW, but those who formed the Committee and furthered its plans were not relieved from the responsibilities imposed on them by the UAW-Chrysler Agreements. Accordingly, in my opinion if they sought and relied on advice from sources other than the UAW, they did so at their own risk and peril. Moreover the testimony of Attorney Glotta called by the Union, was to the effect that he advised Grievants that for them to be protected by the Statute they would have to prove both (a) that working conditions were abnormally dangerous at the Eldon Plant and (b) that their quitting of work was in good faith because of such abnormal dangers. Grievants took it upon themselves to make the decision that they could prove that working conditions were abnormally dangerous. It is clear that they failed in that proof before the National Labor Relations Board. On Grievants behalf the Union has tried to convince me by testimony and exhibits that the Eldon Avenue Plant was an unsafe place to work. But as I pointed out in Case 5351-1970:9, the Union did not at the time regard the plant as dangerous to a degree that justified resort to contractually valid strike procedures. And if the Union did not deem the circumstances to be sufficiently unsafe to resort to a legitimate strike, it cannot reasonably expect the Chairman to conclude that they were so bad as to justify or mitigate resort to unauthorized wildcat strike or picketing activity.

It is important to note that this case does not deal with a situation where one employe or a group of employes cease work because of a hazardous defect which immediately and directly affects them. Entirely different considerations come to bear upon the reasonableness of disciplinary action imposed for refusal to perform assigned work where the refusal is based on good faith belief supported by some reason that an abnormal risk of bodily harm is involved in the work assignment. In this case Grievants undertook a course of picketing activity because of alleged generalized unsafe working conditions affecting the entire plant. The means resorted to by Grievants, in my opinion, was reckless, irresponsible and grossly disproportionate to the actual facts and circumstances concerning safety in the plant at the time.

The remaining question is whether the discharges or any of them constitute unjustly severe discipline. I have concluded that they do not. Grievants were the planners and leaders in setting up the picket lines and distributing handbills on May 27 and 28. They were not mere participants in a stoppage that was touched off by the leadership of others. They are not Union representatives called to account only for negative leadership by failing to restrain or deter others from violations of Section (5). Grievants were the originators of the idea to picket and handbill the plant entrances on the concerned days. I have rejected the Unions contention that their behavior amounted to no more than a "demonstration" of a sort not in violation of Section (5). I take it as well established that for affirmative leadership of a work stoppage or organized picketing in violation of the Agreement discharge is an appropriate penalty. The burden of persuading the Chairman to modify rests heavily upon the employe and the Union on his behalf.

Of the four men whose discharges are now under review, only one, Taylor, sought by testifying to explain away his behavior as otherwise established by the evidence. McKee and Chandler appeared at the hearing before the Chairman and made themselves available for cross examination, which the Company declined to do, but did not testify. Edwards did not even appear at the hearing, although, as the Union has proved, he was notified that his appeal was pending and that he should contact the Union to prepare for trial. Edwards failure to assist the Union and appear in his own defense is a compelling indication of disinterest in the outcome. McKee and Chandler by offering to submit to cross examination manisfested present good faith and willingness to cooperate in the proceedings, but I take their omission to testify on their own volition as an indication that they would not contradict any important fact established by other evidence.

Taylor did testify at some length concerning the attitudes and behavior of himself and other members of the Safety Committee. He attempted to dissociate himself from any activity or expression, written or verbal, that identified the incidents of May 27-28 as a stoppage or attempt to interfere with normal attendance and production. He testified to the effect that he meant only to publicize his views and neither intended or foresaw that his actions would adversely affect plant operations.

It appears that Taylor is an educated man, having graduated from Law School, and that he is a member of the Bar. Contrary to generally accepted values, his asserted judgement is that he prefers to labor in a factory rather than pursue a professional career. Granting that Taylor is free to choose among alternative modes of living, he cannot avoid his own intelligence and acumen. The Chairman is not obliged to and does not judge Taylors testimony as to his intentions and purposes as if he were possessed only of a common education. And the Chairman is simply unable to credit Taylors assertion that he neither intended nor foresaw that the course of action pursued by himself and his cohorts on the Safety Committee on May 27-28 would result in an interference with the operation of the plant. Taylor, like the others, was aware that there had been two wildcats at the plant in recent months. He was aware that handbills had been circulated, some of them written by himself, calling attention to the rights of workers to cease work in face of abnormal danger under the National Labor Relations Act and he knew the pickets were publicizing the dangers. It borders absurdity for him to assert that he was innocent of intent to interfere with production. His testimony does not move me to extend special consideration to him.

Decision

The grievance is denied. The discharges are affirmed.

December 21, 1971

Gabriel N. Alexander, Impartial Chairman