In the Matter of EMPIRE BOX, INCORPORATED *and* INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA, AMERICAN FEDERATION OF LABOR

Case No. 10–C–2082.—Decided September 27, 1948

DECISION

AND

ORDER

On November 26, 1947, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in any unfair labor practices and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Union and the attorney for the General Counsel filed exceptions to the Intermediate Report together with supporting briefs.

The Board [1] has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, Empire Box, Incorporated, Atlanta, Georgia, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Charles M. Paschal, Jr., Esq., for the Board.

Messrs. Herman L. Moore and *W. H. Henley*, of Atlanta, Ga., for the Respondent.

Messrs. George O. Baker and *Warren W. McCann*, of Atlanta, Ga., for the Union.

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[1] Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Houston, Reynolds, and Gray].

STATEMENT OF THE CASE

Upon an amended charge duly filed July 8, 1947,[1] by International Printing Pressmen and Assistants Union of North America, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint, dated July 8, 1947, against Empire Box, Incorporated, of Atlanta, Georgia, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the amended charge, together with notice of hearing thereon, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (a) that the Respondent on or about August 28, 1946, discharged and thereafter refused to reinstate Pearl Crowder for the reason that she joined and assisted the Union and engaged in concerted activities with other employees for the purposes of collective bargaining and mutual aid and protection; (b) that from on and after July 1946, the Respondent vilified, disparaged and expressed disapproval of the Union; urged, threatened and warned its employees to refrain from assisting, becoming members of or remaining members of the Union; initiated and circulated an anti-union petition; and conducted a poll to determine which of its employees were members of the Union;[2] and (c) that by the foregoing conduct the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, more particularly within the meaning of Section 8 (1) and (3) of the Act.

On July 28, 1947, the Respondent filed an answer[3] in which it denied engaging in any of the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held at Atlanta, Georgia, on July 28 and 29, 1947, before Louis Plost, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board was represented by counsel; the Respondent and the Union by representatives. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. Without objection the undersigned granted motions by the Board's attorney to amend the complaint and also conform the pleadings to the proof with respect to errors in spelling, dates, and similar minor variances. An opportunity was afforded all parties to argue orally on the record and to file briefs, proposed findings of fact and conclusions of law, or both, with the undersigned. Oral argument was presented by the attorney for the Board. No briefs or proposed findings of fact and conclusions of law have been received.

Upon the entire record and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Empire Box, Incorporated, is a Georgia corporation having its plant and office in Atlanta, Georgia, where it is engaged in the manufacture,

[1] The original charge, containing the same allegations, was filed by the Union September 30, 1946

[2] At the hearing the undersigned granted, without objection, a motion by the Board to amend its complaint to so allege.

[3] Permission to file its answer was granted the Respondent by the undersigned at the opening of the hearing and over the objection of the Board's attorney.

sale and distribution of paper boxes and related products. During the usual course of its business, the Respondent purchases and has shipped to it in interstate commerce from points outside the State of Georgia approximately 40 percent of the raw materials it uses in the manufacture of its product. During 1946, such materials received by the Respondent in interstate commerce had a dollar value of $60,000. During the same period, the Respondent shipped in interstate commerce approximately 5 percent of its finished products, having a dollar value in excess of $10,000.

The undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Printing Pressmen and Assistants Union of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The alleged discriminatory discharge of Pearl Crowder*

1. Organization of the Union

On or about January 1, 1946, the Respondent acquired the plant and business of a paper box manufacturing company which had been in existence for many years but which had gone to seed. Upon taking over the business, the Respondent embarked on a policy of modernization which included both the overhauling of its physical plant and increasing its wage rates.

Apparently there had been no union organization among the employees of the Respondent's predecessor. Sometime in June 1946, the Union began to organize the Respondent's employees. The first organizational meeting was held June 18, 1946. At this meeting a local [4] was organized and Pearl Crowder was elected its president.

On July 23, 1946, the Tenth Regional Office of the Board conducted an election among certain of the Respondent's employees to determine a bargaining representative at which the Respondent's employees designated the Union as their bargaining representative. On September 19, 1946, the Union and the Respondent entered into a collective bargaining contract which remains in effect by its own terms until December 31, 1947, and is to be automatically renewed for a further period of 1 year unless notice of termination is given by either party.

2. Discharge of Pearl Crowder

Pearl Crowder testified that sometime during the working day of August 27, 1946, she had been informed that a new employee had requested employee Fannie Mae Phillips Corn, the local's secretary,[5] to sign her into the Union but that the latter, acting on instructions of the local union's vice-secretary, had not done so. As mentioned above, Pearl Crowder was president of the local but there was

[4] The local union is Atlanta Paper Products and Specialty Workers' Union No. 527. The collective bargaining contract hereinafter referred to is signed by the local and the Respondent. The charge was filed by the parent organization.

[5] Variously referred to in the record as Fannie Mae, Fannie Mae Phillips, Mrs. Phillips, and Fannie Mae Phillips Corn.

at the time no contract between the Union and the Respondent, and in fact no negotiations for such a contract had been entered into.

Crowder testified as follows:

> . . . I sent for Mrs. Phillips to come to my table when she came in. She usually got there about 3:00 o'clock and she would go to each girl's table and talk before working hours.
>
> I waited for her and she didn't come. When I got off, I had my pocketbook in one arm and about ten Coca-Cola bottles in the other arm, and my hat and shoes and I went to her machine and I said, "Fannie Mae, I understand you have got a new girl. You write her up," and I said, "I heard Elizabeth told you not to write her up but I don't see what right she has to tell you anything," and I walked out.

Crowder further testified that at approximately 11 a. m. of the following day, Grover Shaddix, the superintendent of the box department, came to her place of work and asked her to come to the office. Regarding what followed thereafter, Crowder testified:

> . . . So I said, "All right, let's go," and I went downstairs and when I got there Grover [Shaddix] were in the office, and Mr. Moore [the plant superintendent] and him were talking, and I stepped in the office. I said, "If you have got anything to say about me, say it to my face."
>
> He said, "We are not talking about you. We are figuring your time."

Crowder further testified that Moore read her a "letter" giving the reasons for her discharge and asked her to sign it, which she refused to do and that Moore also made reference to Crowder's statements to Corn the previous day and stated that Crowder had "made her cry."

Corn testified, regarding the above-related incident between Crowder and herself, that on August 27, while she was at work but when Crowder was leaving for the day;

> Well, she [Crowder] came up to me and started like that (indicating), and I turned around. I was operating the machine and . . . I turned to see what was the trouble and she said, "Laura called me last night and told me" I was working against the Union, and I was doing this and I was doing that, and I said, "Well, wait a minute," and that's the only word I said to her during the whole thing. . . .

Corn testified that Crowder spoke to her for about 5 minutes and then left and that, *inter alia*, Crowder stated, "I am President of this damn thing and you'll do what I say." Corn also testified:

> I stood there for a minute and I was nervous and my niece was helping me and she came around there and was talking to me. I kind of got to shaking and I couldn't operate the machine and I did cry for just a little bit, but it was because I was nervous; you know.
>
> Hearing Examiner PLOST. Did you report this to the foreman?
>
> The WITNESS. My foreman saw it.
>
> * * * * * * *
>
> The WITNESS. He said what was the matter and I told him that she was mad and he says, "Well I don't want that happening here."

Corn continued with her work and finished the day. She testified without contradiction that this incident was "the third time" Crowder had "jumped on"

her in the plant regarding Union matters within a period of "two or three weeks time" and that the effect of these affairs had made Corn so nervous that on one of the previous occasions she had asked Crowder "Please don't jump me any more. If we can talk this over in a nice way—"

According to Corn's testimony, she had reported these incidents to her foreman.

From his observation of Crowder and Corn, the undersigned believes the version of the incident between Crowder and Corn at Corn's machine on the afternoon of August 27, as given by Corn, to be the more accurate. Corn impressed the undersigned as a wholly truthful witness, Crowder did not, and the undersigned therefore credits Corn.

Grover Shaddix testified that he became superintendent of the Respondent's set-up box department about 2 weeks before Crowder's discharge. Prior to being made superintendent of the department, Shaddix was a machine operator. On the morning of August 28, the night foreman reported to Shaddix that Crowder had "picked a fuss" with Corn and "had her crying on the job." Shaddix called Crowder and, according to his testimony, told her that he wanted "harmony amongst the employees" and "didn't want any fighting or fuss," but Crowder replied "that as far as the job was concerned she did not give a damn about it." Shaddix then reported to W. H. Henley, the assistant plant manager, and recommended Crowder's discharge. Shaddix testified that one of the reasons he discharged Crowder was because of her statement that she "didn't care a damn for her job." Crowder denied making the statement. The undersigned does not deem it necessary to resolve this conflict in the testimony as it is evident that Shaddix did not discharge Crowder and apparently had only authority to recommend a discharge and furthermore the record is clear that the alleged remark did not enter into Crowder's discharge at the time she was discharged.

Herman L. Moore, the Respondent's general manager, testified that on the morning of August 28, Henley reported to him that Crowder had created a disturbance at Corn's machine "concerning something about the collection of dues"; and that thereafter Moore spoke to Shaddix and to several unidentified employees who had witnessed the occurrence and then sent for Crowder. While Crowder was in his office, Moore read her the following statement which, according to Moore, she was not asked to sign:

> Mrs. Pearl Crowder of 742 Pryer Street, table piece work operator, was dismissed today for the following causes: reckless and vicious conduct affecting the morale of fellow employees; causing disturbance during working hours resulting in loss of production; threats to other employees while on company premises; making statements derogatory to company interests in the presence of other employees while on company time and premises.
>
> (Signed) HERMAN L. MOORE.

Moore testified that all the charges enumerated in the letter, save the last, referred to the August 27 incident at Corn's machine and that the last charge regarding derogatory statements referred to other conduct of Crowder not otherwise explained in the record. Moore furnished a copy of the statement to the Union.

It is conceded that Crowder was a competent employee. Crowder admitted that she was irregular in attendance.

Cordelia Porterfield, a witness called by the Board, testified that Crowder never left her work but that "I have seen lots come to Mrs. Crowder's table but she didn't leave."

Pauline Mathews, who is Crowder's sister and was called by the Board, testified that Crowder never left her work but that other employees sometimes came to her table to talk.

Crowder testified that she had first sent for Corn to come to her table and that when Corn did not do so she went to Corn's machine, during Corn's working time. Crowder testified on cross-examination:

> Q. (By Mr. MOORE.) Then the discussion was between a different department, or a machine operator, and you, as a table operator?
>
> A. Sure. I had that right. I sent for her to come to my table before she went to work. That was my right to do that.
>
> * * * * * * *
>
> Trial Examiner PLOST. And you say it was your right to send for her to come to you. What do you mean by that?
>
> The WITNESS. I meant as president of the Union the girls came to me and asked me to talk to her to get this girl to sign up and when she came up about 3:30 and sometimes 2:30 every day, I thought she could come to my table and talk before—as she usually did—before she went to work, and she didn't come.
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> * * * * * * *
>
> Hearing Examiner PLOST. You didn't have any contract at that time with the Company? The Union didn't?
>
> The WITNESS. No, sir.

It is clear that Crowder first sent for Corn to come to her table for an interview at a time when Crowder would be at work but Corn would not, and that upon Corn's ignoring her request, Crowder went to Corn at a time when Crowder was not on duty but Corn was. Crowder admitted that she had "arguments" with other employees at various times.

3. Conclusions

As herein found the Union held its first organizational meeting and election of officers for the local on June 18; on July 23, an election to determine a bargaining agent was conducted among the Respondent's employees by the Board's Regional Office; on August 28, Crowder was discharged; and on September 19, a contract between the Union and the Respondent was entered into. At the time of Crowder's discharge, negotiations for a contract had not yet begun. In addition, the record shows that the Respondent never opposed the Union in its organizational effort or engaged in any unfair labor practices prior to Crowder's discharge. On the contrary, the Respondent was prompt in its recognition of the Union's rights as they became apparent. This finding is supported by the testimony of William Ralph Sanders, who was the Union's organizer and representative during the period of organization and represented the Union until after the contract was signed. Sanders, who was called by the Board, testified:

> Q. (By Mr. MOORE.) In other words, as far as your dealings with the Company or management, in any way, there was a harmonious progress in every respect.
>
> A. There was. I was treated most courteously.

The undersigned is convinced that upon becoming president of the local union, Crowder not only misunderstood her "rights" as an officer of a labor organization not under contract with the employer but also deliberately engaged in

conduct on the Respondent's time and premises which went far beyond the legitimate scope of employees' concerted activities.

Upon a review of all the evidence, it is the considered opinion of the undersigned that there is lacking clear, substantial and persuasive evidence that the Respondent discharged and thereafter refused to reinstate Crowder because she joined and assisted the Union and engaged in concerted activities with other employees for the purposes of collective bargaining or other mutual aid and protection as alleged in the complaint, but that the record does show that Crowder engaged in conduct beyond the legitimate scope of concerted activities and that such conduct tended to disrupt the operations of the employees' business and that because of such conduct on the part of Pearl Crowder, the Respondent on August 28, 1946, discharged her.

The undersigned will accordingly recommend that the complaint be dismissed insofar as it alleges that the Respondent unlawfully discharged Pearl Crowder.

B. *Other alleged acts of interference, restraint and coercion*

The complaint alleged that the Respondent "initiated and circulated an anti-union petition," thereby violating Section 8 (1) of the Act.

In support of this allegation, the Board sought to show that the Respondent initiated and circulated a petition for the formation of a company-dominated union. Two witnesses, Coralee Jennings and Alma Gaddis, called by the Board, testified that a paper, which they described as being a sheet of company stationery, was circulated among some of the employees and various signatures were taken; however, both witnesses agreed that there was no caption on the paper and that it appeared to be a list of names. No meetings for the formation of any labor organization other than the Union were held among the employees. The testimony of both Jennings and Gaddis was extremely vague regarding the "petition."

Jennings testified that "one of the women" asked her, "Do you want to join the Company union with us?" and then advised her to see Bill Smith, apparently a supervisor, who told Jennings, when the latter asked for the paper, that he did not have it but later called her to his office and told her to sign if she cared to. Jennings did not sign. Jennings testified that the above-related incident occurred after the Union election (July 23, 1946). Gaddis testified that she affixed her signature to a sheet of paper on which only names appeared, but otherwise she seems to have understood nothing of its purpose. According to Gaddis, some time after she had put her signature to the paper, Henley told her that "if that went through all right" there would be a pay raise and a place to meet would be provided for employees in the plant. Gaddis' testimony was vague and did not impress the undersigned favorably.

The undersigned can find nothing of probative value in the testimony adduced to prove the Board's allegation that the Respondent initiated and circulated an anti-union petition or that an attempt was made to form a company-dominated union. He will therefore recommend the complaint be dismissed insofar as it so alleges.

The Union and the Respondent signed a collective bargaining agreement September 18, 1946. This contract contained the following clause:

> All employees who are now members of the Union in good standing in accordance with the constitution and bylaws of the Union and all employees hereafter becoming members shall, as a condition of employment remain members of the Union in good standing for the duration of the contract.

* * * * * * *

In order that the Employer may be informed who is a member of the Union, the Union will furnish to the employer a written list of its members.

On September 24, the Union furnished a list of its members to the Respondent.

General Manager Moore freely admitted that between the time the contract was signed and the date the Respondent received its list of members from the Union, he caused cards to be circulated among the employees on which each of the employees indicated membership or lack of membership in the Union. Moore testified this was done in order to prevent any future argument "for the interest of the Union as well as ourselves."

The Board amended its complaint to allege a violation of Section 8 (1) in that "the company conducted a poll among its employees to determine whether or not they were members of the Union."

In view of all the circumstances, the undersigned is not persuaded that the act of the Respondent in seeking to ascertain which of its employees were bound to membership in the Union by reason of the contract between the Respondent and the Union, as found herein, was an unfair labor practice and will accordingly recommend that the complaint be dismissed insofar as it so alleges.

In addition, the Board sought to show that the Respondent violated Section 8 (1) of the Act by certain conduct at meetings with the Union's grievance committee.

The record discloses that there have been but three meetings between the Respondent and the Union grievance committee, all of them convened at the request of the Union. Members of the committee, called by the Board, testified that all the meetings arrived at results acceptable to the Union.

Pauline Mathews, who was a member of the committee, testified that at a grievance committee meeting held January 22, 1947, Assistant Manager Henley told the committee members: "that the Union was going to cooperate with him, the Union members. They had enough evidence in some cards he had in his hands to get rid of every one of them, if he so desired, and if we didn't cooperate with the Union he was going to bust up the Union and we had it now and we were going to abide by the rules."

Mathews further testified that at another meeting, "Mr. Henley told us at that meeting he was going to have cooperation from the Union and the union members. That if he didn't get it, he was going to tear up the contract and burn down the building."

Cordelia Porterfield testified that at a grievance committee meeting Henley "would just get mad and he would tell us about the way the contract was, and what we had to do, and all this, that and the other, and then he finally, in one of them, he said he would tear up the contract and burn down the building. He had some cards there. He could fire every one of the union members if he so desired."

Carrie Bell, a grievance committee member called by the Board, testified that at a committee meeting Henley said that "We wanted a union and we had one and that everybody was going to have to cooperate with it. If they didn't, he was just going to burst it up and tear up the contract and, as I remember, burn the building down. He said that, 'I am going to have cooperation from everyone, and I mean it.' "

The undersigned fails to understand the theory under which the above-found statements by Henley constitute unfair labor practices. Surely, if it is the theory of the Board's attorney that the Act is intended to police every grievance meeting between a Union and an employer acting under a contract, an action

thereon should be bottomed on something more substantial than extravagant and silly language used in a meeting which admittedly arrived at a solution acceptable to the Union.

Upon a review of all the evidence in the case, the undersigned finds that the Board has not sustained any of the allegations of the complaint, that the Respondent has not interfered with, restrained or coerced any of its employees in the exercise of the rights guaranteed in Section 7 of the Act, and that the Respondent did not discriminatorily discharge Pearl Crowder. Upon the entire record in the case, the undersigned is convinced and finds that the respondent did not violate the Act as alleged in the complaint. Accordingly, the undersigned will recommend that the complaint be dismissed in its entirety.

Upon the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. The operations of the Respondent, Empire Box, Incorporated, occur in commerce, within the meaning of Section 2 (6) and (7) of the Act.

2. The Respondent has not engaged in unfair labor practices as alleged in the complaint, within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all obections and exceptions thereto shall be deemed waived for all purposes.

Louis Plost,
Trial Examiner.

Dated November 26, 1947.