

In the Matter of RUBBER STAMPS, INC. and INTERNATIONAL METAL
ENGRAVERS UNION, UNAFFILIATED

Case No. 2-C-5605.—Decided June 2, 1945

DECISION

AND

ORDER

On January 16, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report annexed hereto. None of the parties has filed Exceptions to the Intermediate Report, or briefs, or requested a hearing before the Board for the purpose of oral argument.

The Board has considered the rulings of the Trial Examiner at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case; as noted above, no exceptions have been filed. Accordingly, the Board hereby adopts the findings,¹ 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, the National Labor Relations Board hereby orders that the respondent, Rubber Stamps, Inc., New York City, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Metal Engravers Union, unaffiliated, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other

¹ The Trial Examiner states that Garsson was hired as a compositor to July 15. However, the record establishes, and we find, that Garsson was hired in this capacity on July 11. This discrepancy does not effect the correctness of the Trial Examiner's other findings or conclusions, which we adopt herein.

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manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment ;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self organization, to form labor organizations, to join or assist International Metal Engravers Union, unaffiliated, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act :

(a) Offer to George Garsson immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges ;

(b) Make whole George Garsson for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period ;

(c) Post at its plant at New York City, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Second Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material ;

(d) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Metal Engravers Union, unaffiliated, or any other labor organization, to bargain collec-

tively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

George Garsson.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

RUBBER STAMPS, INC., *Employer.*

By

(Representative)

Dated

NOTE—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

Mr. Jack Davis, for the Board.

Mr. Alfred A. Levey, of New York, N. Y., for the respondent

Mr. Conrad Woelfel, of New York, N. Y., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by International Metal Engravers Union, unaffiliated, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director of the Second Region (New York, N. Y.), issued its complaint dated November 17, 1944, against Rubber Stamps, Inc., 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 charge, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that (1) the respondent discharged George Garsson on or about July 17, 1944, and has since that date failed and refused to reinstate said Garsson because he joined or assisted the Union; and (2) the respondent, from on or about July 17, 1944, to the date of the issuance of this complaint, vilified, disparaged, and expressed disapproval of the Union, interrogated its employees concerning their union affiliations, urged, persuaded, and warned its employees to refrain from joining or assisting the Union,

and threatened its employees with discharge or other reprisals if they joined or assisted the Union. The respondent filed no answer to the aforesaid complaint.

Pursuant to the aforesaid notice a hearing was held in New York City on December 12 before William J. Isaacson, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board represented by counsel, the Union by a representative, and the respondent by its president, participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the conclusion of the case counsel for the Board moved to conform the complaint with respect to formal matters to the evidence adduced. There was no objection and the motion was granted. Although all parties were afforded an opportunity to argue orally on the record before the undersigned, none of the parties availed themselves of this opportunity. Nor did the parties avail themselves of the opportunity to file briefs with the undersigned.

Upon the entire record in the case and from his observation of the witness, the undersigned makes the following.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT¹

Rubber Stamps, Inc., a New York corporation, has its principal office and place of business in New York City, where it is engaged in the manufacture, sale, and distribution of rubber stamps. During the period beginning in December 1943 to the date of the hearing, the respondent used in its above operations raw materials consisting of wood, rubber, and bakelite. The bakelite, having a value of approximately \$500, was shipped to the respondent's plant from points outside the State of New York. During the same period 98 percent of the respondent's finished products, having a value of about \$50,000, was manufactured under a contract with the Navy and delivered to the United States Naval Supply Depot in Brooklyn, New York. The Navy thereupon ships these goods to points throughout the United States and delivers them to Navy vessels sailing to points throughout the world. The respondent admits that it is engaged in commerce within the meaning of the Act

II. THE LABOR ORGANIZATION INVOLVED

International Metal Engravers Union, unaffiliated, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES²

A. *Interference, restraint, and coercion prior to and accompanying George Garsson's discharge; George Garsson's discharge*

On Friday, July 14, 1944, employee George Garsson, a union member, asked one

¹ These findings of fact are based upon stipulations in the record between counsel for the Board and the respondent's president.

² The testimony of the Board's witnesses in support of the allegations in the complaint is confined solely to statements and conduct attributed to President Levey. Their testimony is in large measure corroborative of one another. The respondent made no real attempt to rebut their testimony. President Alfred Levey called no witnesses other than himself to testify at the hearing in the instant case. Moreover, Levey, upon being sworn as a witness, merely stated, "All the remarks that have been passed that I said about the Union are false." He qualified this statement, declaring "I have said things but it has not been against the Union. It has been probably members of the union." Furthermore, in several instances he corroborated testimony of Board witnesses, and, on several occasions during the hearing, he expressed his hostility to the Union. Upon this state of the record the undersigned accepts the credible testimony of the Board's witnesses as a truthful account of what occurred and finds that President Levey made the statements and engaged in the conduct hereinafter set forth

of his fellow employees, Benjamin Abromowitz, before work, to join the Union. Abromowitz agreed to join the Union and that night he went to the union hall with Garsson and became a union member. The next day Abromowitz told Garsson that he deemed it his duty as an employee of the respondent to advise President Levey that they were union members. Garsson suggested that he "let it go till Monday." Abromowitz acceded to his suggestion. On Monday, July 17, Abromowitz again informed Garsson that he would inform Levey of their membership. Thereupon, Abromowitz called Levey aside and told him that he, Abromowitz, was a union man and that he thought "it was only fair that [Levey] should know about that." Levey replied, "Ben, you are making a big mistake. The Union is a bunch of racketeers and gangsters and they only want your dues every month." He continued, "I ought to know because I was one of the organizers of that Union." He thereupon pointed out that "this was not much of a union," that their organizational efforts had been largely ineffectual. Abromowitz replied that he nevertheless desired to be a union member. He concluded the discussion by informing Levey that Levey would receive a registered letter from the Union requesting recognition. Levey thereupon approached Garsson and said, "so you are a union man." Garsson replied that he was. Levey said, "I would advise you to quit [the respondent's employ]."³ Garsson inquired, "are my services satisfactory?" Levey, replying affirmatively, added that although eventually he would be compelled "to sign up with the Union" he would "give [them] a fight."³

Later in the day Levey refused to accept the registered letter sent to him by the Union and so informed Garsson and Abromowitz. Garsson replied that he considered Levey's action to be "foolish". About 2:30 o'clock that same afternoon the Union's representative, Conrad Woelfel, learning of the respondent's rejection of the letter, attempted to deliver it personally. Woelfel first inquired of Levey why he had refused to accept it. Levey replied that "he would have nothing to do with the union and he didn't give a damn what was in the letter". Woelfel, urging that Levey at least read it, handed him the letter. Levey, refusing to read the letter, threw it into the corridor. Woelfel asserted that the Union represented the employees and that the letter, setting forth this claim, contained a draft of an agreement for negotiations. Levey advised Woelfel that the representation of his employees was "none of [Woelfel's] business" and that Woelfel should "get the hell" out of the shop. He threatened either to call a policeman to remove Woelfel, or to complain to the Navy that Woelfel was interfering with production under the Navy contract. Finally, Levey, in the presence of the employees, seized Woelfel and physically ejected him from the plant. Levey thereupon shouted to the employees. "There is your union, a bunch of gangsters trying to come in here and run my shop for me." Levey continued, "We will see if we want a union around this place." He then inquired of the female employees whether they desired a union.⁴ They replied in the negative. He turned to Abromowitz and declared, "you are outvoted."

Levey next informed Garsson, "You are through after 5 o'clock [the end of the working day]. I won't have any union around here." About a half hour later, as Abromowitz was instructing Garsson in the method of producing a certain kind of type, Levey informed Garsson, "You are now through." He warned Garsson, "If you go looking for a job in this business, I am going to blackball you."

³ Abromowitz overheard several of Levey's conversations with Garsson that day. He was admittedly unable, however, to recall precisely what he overheard during each particular conversation. Accordingly, to the extent that Abromowitz's version of these various conversations differs from that of Garsson the undersigned accepts Garsson's version thereof.

⁴ At the time herein above set forth the respondent had in its employ 6 employees, 4 females and 2 males, Garsson and Abromowitz. Three of the four female employees were schoolgirls who worked only during the summer.

Levey contended at the hearing that the respondent's operations required the services of an experienced moulder and that Garsson was discharged because he could not qualify as such. This contention is wholly without merit. It is conclusively established by the above statement of facts that the sole reason for Garsson's discharge was his union membership and activities.⁵ In any event Garsson, as the credible testimony of Garsson and Abromowitz establishes, was hired not as a moulder, but as a compositor on July 15, but 6 days before his discharge. He was to become familiar with the moulding operation only at such times as there was no composing work. Abromowitz, who was an experienced moulder, testified that it was impossible to learn the respondent's moulding operation within the short time Garsson was employed in the respondent's plant. He further testified that he, himself, had needed approximately a month in order to learn the entire moulding operation.⁶

Upon the foregoing facts and the entire record the undersigned finds that Garsson was discharged because of his membership in the Union and activities on its behalf, the respondent thereby interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed them under the Act. The undersigned further finds that the respondent's anti-union statements and conduct hereinabove set forth viewed in their totality against a background of employer hostility to the Union and its adherents, including the discriminatory discharge of Garsson, constituted independent violations of the rights guaranteed the employees in Section 7 of the Act.⁷

B. Acts of interference, restraint, and coercion subsequent to Garsson's discharge

Garsson's discharge did not signalize the cessation of the respondent's anti-union activities. President Levey continued his campaign to oust the Union from the plant. About a week after Garsson's discharge President Levey hired one Jack Steinowitz under the following circumstances. Steinowitz who was unemployed at the time, was informed by Woelfel that there was a job available at the respondent's plant. He thereupon telephoned Levey and inquired concerning the job. He assured Levey that he had had sufficient experience, having worked in several rubber stamp shops including the Samuel H. Moss Co. Levey replied, "I would be very interested in hiring a man of your caliber, but since you worked at Samuel H. Moss and that is a union shop, I must know are you still a member of the Union?" Steinowitz replied that he no longer was a union member. Levey then inquired whether he would be "willing to sign an affidavit to that effect." Upon Steinowitz's affirmative reply, Levey asked him to come to the plant for an interview. During the interview Levey again expressed a doubt as to whether Steinowitz was, as he said, no longer a union member. Steinowitz reiterated that he was not then a union member and that he had previously been a union member only because it was required under a closed-shop contract. Thereupon Levey directed Abromowitz to take Steinowitz upon a tour of the plant. At the conclusion of the interview, when the question of union membership was again raised by Levey, Steinowitz once more offered to make an affidavit. Levey, apparently convinced by Steinowitz's protestations, replied that it would be unnecessary. Subsequently, upon hiring one Jack Weinrib as a compositor, Levey inquired of him whether he was a

⁵ Levey admitted at the hearing that he had had an "argument" with Garsson about the Union and that he, Levey, was "very much hurt" and "very sore."

⁶ The respondent raises no question concerning the manner in which Garsson performed his duties as a compositor. Levey expressly admitted that he had found no fault with Garsson's work as a compositor. Abromowitz testified that insofar as Garsson's work as a compositor was concerned, "He did his duties, did what he was told, and did them competently." Garsson testified that not only had he received no complaints concerning his work but that on Saturday, 2 days before his discharge, Levey informed him, "I think you will get along very nicely here."

⁷ The undersigned finds further evidence of independent violations of the rights guaranteed the employees in Section 7 of the Act in the respondent's conduct and statements subsequent to Garsson's discharge, as hereinafter set out.

union member. Levey, after first testifying that Weinrib replied in the affirmative, admitted that "He might have said no."

On October 24, 1944, the Union filed a petition with the Board's Regional Offices, alleging that a question concerning representation among the respondent's employees had arisen. (*Matter of Rubber Stamps, Inc.*, Case No. 2-R-5142.) On November 21 the respondent and the Union entered into an agreement providing for the Board's Regional Office in New York City to conduct an election among the respondent's employees. On November 29 an election was held, the results of which were as follows: 3 voting for the Union, 2 against.⁸

Shortly before the aforesaid election Levey addressed the employees as follows: "You fellows are going to have your own union shop around here all right, but it is going to be the best damn union shop in the city. You will not have any more coffee in the morning on my time. If you are going to come five minutes late, you are going to be docked for it. No making up for it any more. I am going to make it so tough around here that even you [pointing to Abromowitz] will consider it a pleasure to leave." He added, "Christmastime the girls in there [the office] are going to get bonuses, but not you fellows here"⁹ On the day of the election Levey, upon arriving at the shop shouted to Abromowitz in the presence of the employees, "Stop electioneering around here. The girls don't want to be bothered with your electioneering." Abromowitz protested that he had not been electioneering in the plant. Steinowitz interjected that Abromowitz was entirely within his rights in electioneering off of the respondent's premises on his own time. Levey replied, "I won't stand for a union in here anyway." Steinowitz pointed out that by making the foregoing statement Levey was electioneering in violation of the law. Levey answered, "I don't care if I am violating the law, I don't care if I am electioneering."

The undersigned finds that the respondent, by the foregoing statements and conduct, including questioning applicants for hire as to their union affiliation and threatening economic reprisals to its employees if they designated the Union as their collective bargaining representative, further interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.¹⁰

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of the respondent set forth in Section III, above, occurring in connection with the operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

⁸ The complaint in the instant case contains no allegation that the respondent refused to bargain collectively in violation in Section 8 (5) of the Act

⁹ Levey referred to the bonus which he customarily gave the employees before Christmas. The previous year he had given each employee a war bond having a face value in the amount of \$25.00

¹⁰ Levey, on several occasions during the hearing, admitted his hostility to the Union. He declared, "this whole thing," referring to the Union's organizational campaign and the hearing in the instant case, "has driven me to the point and the factory is in such a condition that I don't see how we can honestly tell the Navy that we can finish the rest of the contract . . . I think the contract should be taken away from us . . ." In explanation of the foregoing statement he declared, "I have had employees there that I had a lot of confidence in, and I feel I could not continue even if I signed the union shop. I could not be amicable, and I could not work with the men. I don't see how I can." He added, "The feeling is not there that was there before . . . I feel that everything that was done in joining the Union was done in such a manner that it could have been done and I could have been taken into confidence, and they would have joined the Union anyway, but at least I felt I should have known about it and not be told by somebody else."

V THE REMEDY

Since it has been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Since it has also been found that the respondent discriminated in regard to the hire and tenure of employment of George Garsson, it will be recommended that the respondent offer him full and immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges. It will be further recommended that the respondent make him whole for any loss of pay he may have suffered by reason of such discrimination by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of the discharge to the date of respondent's offer of reinstatement, less his net earnings¹¹ during such period.

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

CONCLUSIONS OF LAW

1. International Metal Engravers Union, an unaffiliated organization, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of George Garsson, and thereby discouraging membership in International Metal Engravers Union, unaffiliated, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Rubber Stamps, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Metal Engravers Union, unaffiliated, or in any other labor organization of its employees, by discriminatorily discharging any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Metal Engravers Union, unaffiliated, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

¹¹ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Offer George Garsson immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole George Garsson for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings¹² during such period;

(c) Post immediately in conspicuous places at its plant in New York City, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of International Metal Engravers Union, unaffiliated, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that or any other labor organization.

(d) Notify the Regional Director for the Second Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four 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 four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in Section 33, 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 the order transferring the case to the Board.

WILLIAM J. ISAACSON
Trial Examiner

Dated January 16, 1945.

¹² See footnote 11, *supra*