In the Matter of THE HARTFORD COURANT COMPANY *and* HARTFORD PRINTING PRESSMEN & ASSISTANTS' UNION NO. 83, AFFILIATED WITH PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (A. F. L.)

Case No. 1–C–2460.—Decided October 15, 1945

Mr. Robert E. Greene, for the Board.

Day, Berry & Howard, by *Mr. Cyril Coleman*, of Hartford, Conn., for the respondent.

Mr. Anthony J. DeAndrade, of Boston, Mass., for the Union.

Mr. Robert Silagi, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge filed by Hartford Printing Pressmen & Assistants' Union No. 83, affiliated with Printing Pressmen & Assistants' Union of North America (A. F. L.), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the First Region (Boston, Massachusetts), issued its complaint dated November 22, 1944, against The Hartford Courant Company, herein called the respondent, alleging that the respondent had engaged and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, 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 (1) that from on or about July 11, 1944, the respondent refused to bargain collectively with the Union as the duly designated representative of the employees of the respondent in an appropriate unit; and (2) that from on or about June 13, 1944, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act (a) by inquiring of its employees their reasons for joining the Union and stating to them

that they were foolish to join and would receive no benefits therefrom; (b) by threatening its employees with diminution of earnings and loss of pension rights and sick benefits if the Union were successful in an election to be conducted by the Board on August 18, 1944; (c) by offering its employees increases in pay if they did not join the Union and would vote against it at the election; (d) by granting promotions and wage increases to employees in consideration of their withdrawal from membership in the Union; and (e) by attempting to have certain persons not in the employ of the respondent approach its employees for the purpose of discouraging them from becoming or remaining members of the Union.

The respondent did not file an answer to the complaint.

Pursuant to notice, a hearing was held before Walter Wilbur, the Trial Examiner duly designated by the Chief Trial Examiner, at Hartford, Connecticut, on January 4, 5, and 6, 1945. The Board and the respondent were represented by counsel, and the Union by an international representative. All parties participated in the hearing and were given full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing, counsel for the Board moved to conform the pleadings to the proof with respect to formal matters. The motion was granted. During the course of the hearing the Trial Examiner made various rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On April 24, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist from the unfair labor practices found, and take certain affirmative action designed to effectuate the policies of the Act. He also recommended that the complaint be dismissed insofar as it alleged violation of Section 8 (1) of the Act by the particulars set forth as 2 (b), (c), and (d), above. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Neither counsel for the Board nor the Union filed exceptions to the Intermediate Report. Oral argument before the Board in Washington, D. C., was not requested, and none was held.

The Board has considered the entire record, including the brief and the exceptions filed by the respondent, and finds that the exceptions have merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Connecticut corporation, having its principal office and place of business in Hartford, Connecticut, is engaged in the business of printing and publishing a daily newspaper known as "The Hartford Courant." In the year ending June 30, 1944, the net paid circulation of the daily edition of The Hartford Courant totaled 45,845 copies, of which approximately 3 percent was sold outside the State of Connecticut. The net paid circulation of the Sunday edition of The Hartford Courant for the same period totaled 81,022 copies, of which approximately 2 percent was sold outside the State of Connecticut. In 1943, the respondent purchased raw materials, consisting of newsprint, machinery, type, stereotype metal, ink, and office equipment valued at about $200,000. A substantial part of these raw materials was purchased outside the State of Connecticut and was shipped to the respondent's place of business in Hartford. The total advertising in The Hartford Courant for the year 1943 exceeded $950,000 in value, of which approximately 20 percent consisted of advertising placed with the respondent by advertisers located outside the State of Connecticut. The respondent is a member of the Associated Press and purchases the news service of the North American Newspaper Alliance. Of the news regularly printed in The Hartford Courant, the respondent receives approximately 15 percent from these services. The respondent also furnishes news to the Associated Press which distributes by wire such portion of this news as it desires to recipients outside the State of Connecticut. The respondent subscribes to, and regularly receives at its plant in Hartford, Connecticut, news features, photographs, and related material from news feature and photographic service agencies located outside the State of Connecticut.

II. THE ORGANIZATION INVOLVED

Hartford Printing Pressmen & Assistants' Union is a labor organization affiliated with the International Printing Pressmen & Assistants' Union of North America (A. F. L)., admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The alleged interference, restraint, and coercion*

1. Chronology of events

During the early part of June 1944, the Union inaugurated a campaign to organize the pressmen. It succeded in obtaining applica-

tions for membership in the Union from 11 of the 14 employees eligible for membership. On July 11, 1944, the Union advised the respondent that it represented a majority of the pressmen and requested a conference for the purpose of bargaining collectively. The respondent replied by suggesting that a Board election be conducted to determine the question of representation. Thereafter, on August 1, 1944, the Union filed with the First Regional Office of the Board a petition for certification of representatives and, on August 8, 1944, the Union entered into a consent election agreement with the respondent, which provided that the appropriate unit for collective bargaining should consist of "All employees of the Press Room Department except for the fly boys."[1] The election, held on August 18, 1944, was not determinative because, of a total of 14 ballots cast, 7 were in favor of the Union and 7 were opposed. Five days later, the Union filed objections to the election based upon certain alleged acts of unfair labor practice committed by the respondent prior to the election, acts which generally correspond with the unfair labor practices alleged in the complaint herein. On November 21, the Regional Director for the First Region issued his report in which he sustained the objections to the election, declared the election null and void, and vacated the results thereof. The complaint in the instant case was issued on the following day.

2. The statements made by Fred Salzer to Alfred Simpson

A few weeks prior to the election of August 18, Alfred Simpson, an 18-year-old boy who was employed part time in the pressroom as a fly boy visited the office of Fred Salzer.[2] Simpson testified that he was told by Salzer that he had heard that Simpson had either joined or intended to join the Union; and Salzer then advised Simpson that he would be wasting his money by joining the Union because the Union would be of little value to him in view of the fact that he was only a part-time worker. Salzer admitted the substance of this conversation. Salzer testified that it was the respondent's policy to maintain strict neutrality on all labor matters.[3] He further testified that he had observed this policy at all times with the exception of his conversation with Simpson. In this, Salzer is supported by the

[1] As of the date that the bargaining request was made, the pressroom employees were subdivided as follows: 1 foreman, 1 assistant foreman, 12 pressmen, and 2 fly boys In accordance with the custom of the printing industry, supervisory employees were included in the bargaining unit. At the request of the Union, fly boys were excluded from the unit In his Intermediate Report the Trial Examiner found that the unit, as described in the consent election agreement, was appropriate for the purposes of collective bargaining.

[2] The respondent admits that Foreman Salzer has authority to hire and discharge pressmen.

[3] Salzer testified that he had been advised of this policy several years before by the then president of the respondent The record, however, does not show that this policy was communicated to non-supervisory employees.

record, so far as appears. The reason that he had given Simpson this advice, according to Salzer, was because of Simpson's extreme youth and the fact that he was a part-time employee.

Under the terms of the consent-election agreement, Salzer and Simpson were, respectively, included and excluded from the bargaining unit. The respondent contends, among other things, that Salzer was entitled to express his views with respect to self-organization of employees, particularly in view of the fact that he was a member of the bargaining unit.

In a recent case involving the printing industry,[4] we were confronted with the problem of employer liability for coercive statements made by supervisors who were part of the bargaining unit. We then stated, in pertinent part, ". . . the foreman in their capacity of members of the bargaining unit had the same freedom of action as all other employees with respect to joining or not joining unions and expressing their opinions on the subject. Consequently, the liability of the respondent for the anti-union statements and conduct of the foremen stems, not from their foreman status as such, but from the fact that, as the record establishes, the respondent encouraged, authorized, or ratified their activities or acted in such manner as to lead the employees reasonably to believe that the foremen were acting for and on behalf of management." Inasmuch as the instant record, as hereinafter set forth, does not show that the respondent encouraged, authorized, or ratified Salzer's statement, or that the respondent acted in any manner as to lead the employees reasonably to believe that Salzer acted for and on behalf of management, we find that the respondent did not violate Section 8 (1) of the Act by Salzer's statements to Simpson.

3. The statements made by Andrew Patrizzi to Ernest Stevens, Philip Opinsky, and others

Pressman Stevens testified, without contradiction, that about a week before the election, he saw Patrizzi, superintendent of the mailing room, in his office, and that Patrizzi told Stevens, "The Union will never get you anything. The Courant can give you anything that the Union can. . . . The Union never will be any good down there anyway because the Courant will never grant you a closed shop."

Pressman Philip Opinsky testified, without contradiction, to numerous conversations between Patrizzi and various pressmen in Opinsky's presence. These conversations took place both before and after the election in the respondent's shop or in a restaurant where the employees commonly gathered. The substance of Patrizzi's remarks

[4] *Matter of R R Donnelley and Sons Company*, 60 N L R B 635

was that, the Union, although generally "a good thing," was no good for the pressmen because ". . . you can't do anything, . . . the Courant will not give a closed shop . . . the Courant is going to fight it to the end, . . . all they [the management] want to do is drag it out and the fellows will get disgusted. . . ."

The respondent contends that Patrizzi's statements should not be attributed to it because he exercised no control over the pressmen.[5] The respondent further contends that Patrizzi's statements are privileged because it has not encouraged, authorized, or ratified them. We agree with this contention. Even though the Union made no attempt to organize the employees in the mailing room, had it or another union done so, even under the rule in the *Maryland Drydock* case,[6] the foreman of mailers would have been included within an appropriate bargaining unit of mailers. The situation then is essentially the same as the one in which the foreman of pressmen voiced his opinion on union matters to his subordinate. We therefore find that the respondent, by the expressions of Patrizzi, did not violate Section 8 (1) of the Act.

4. Other alleged acts of interference, restraint, and coercion

At the hearing counsel for the Board introduced evidence to sustain allegations of the complaint that the respondent had violated Section 8 (1) of the Act (1) by threatening its employees with diminution of earnings and loss of pension rights and sick benefits if the Union were successful in the election of August 18, 1944; (2) by offering its employees increases in pay if they did not join the Union and voted against it at the election; and (3) by granting promotions and wage increases to its employees in consideration of their withdrawal from membership in the Union. In his Intermediate Report, the Trial Examiner found that the allegations were not supported by credible testimony. In view of the fact that neither the Union nor counsel for the Board filed any exceptions to the Intermediate Report, we shall adopt such findings of the Trial Examiner without setting forth in detail the evidence referred to above. In addition, no evidence was introduced to sustain the allegation of the complaint that the respondent attempted to have certain persons not employed by it approach the pressmen for the purpose of discouraging them from becoming or remaining members of the Union. We therefore find that the respondent did not interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed under Section 7 of the Act by any acts or statements hereinabove referred to in this paragraph.

[5] The record shows that Patrizzi was a supervisory employee in charge of the respondent's mailers and that his authority to hire and discharge was limited to the mailing department. No special significance is attached to Patrizzi's title of "Superintendent." We find that his authority is on a par with that of Fred Salzer.

[6] *Matter of Maryland Drydock Company*, 49 N L R B 733

B. The alleged refusal to bargain

As stated above, on July 11, the Union claimed to represent 11 of the 14 employees within the respondent's pressroom. When the respondent suggested that the question as to representation be determined by an election, the Union filed a petition for certification of representatives. Thereafter, pursuant to a consent-election agreement, an election was held among all the employees of the respondent's pressroom except fly boys. The election failed to establish that the Union was the majority representative of such employees. Thereafter, the Union filed charges alleging in effect that the respondent had engaged in unfair labor practices which destroyed the Union's majority. Inasmuch as we have found that the respondent did not violate Section 8 (1) of the Act as alleged in the complaint, we find that the respondent is not responsible for any defection from the Union's ranks. In view of the fact that the election did not affirmatively establish that the Union represented a majority of the pressmen, the respondent was under no obligation to bargain with the Union. We find, therefore, that the respondent, by refusing to bargain collectively with the Union on July 11, 1944, and thereafter, did not engage in any unfair labor practice within the meaning of Section 8 (5) of the Act.

Since the evidence does not sustain any allegation of the complaint, we shall dismiss the complaint in its entirety.

Upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Hartford Printing Pressmen & Assistants' Union No. 83, affiliated with Printing Pressmen & Assistants' Union of North America (A. F. L.), is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The operations of the respondent, The Hartford Courant Company, Hartford, Connecticut, occur in commerce, within the meaning of Section 2 (6) and (7) of the Act.

3. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint against The Hartford Courant Company be, and it hereby is, dismissed.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.