HORTON-HUBBARD MFG. CO. *and* INTERNATIONAL HANDBAG, LUGGAGE, BELT AND NOVELTY WORKERS' UNION, A. F. L. *and* THE HORTON & HUBBARD EMPLOYEES UNION, PARTY TO THE CONTRACT. *Case No. 1-CA-648. May 31, 1951*

Decision and Order

On February 27, 1951, Trial Examiner George Bokat issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged 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 attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

The Board 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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

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, Horton-Hubbard Mfg. Co., Somerville, Massachusetts, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) By means of interrogation and threats of economic reprisal or 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 Handbag, Luggage, Belt and Novelty Workers' Union, A. F. L., 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, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor

[1] In view of the General Counsel's failure to file exceptions to the Trial Examiner's refusal to find that the Independent was dominated by the Respondent, the Board adopts without, however, passing upon the merits of the question, the Trial Examiner's disposition of this allegation of the complaint.

organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(b) Recognizing The Horton & Hubbard Employees Union, or any successor thereto, as the representative of any of its employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have been certified by the National Labor Relations Board.

(c) Performing or giving effect to its agreement of July 11, 1950, with The Horton & Hubbard Employees Union, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said labor organization or any successor thereto, unless and until said labor organization shall have been certified by the National Labor Relations Board, provided, however, that nothing herein shall be construed to require the Respondent to vary any substantive provisions of such agreement, or to prejudice the assertion by the employees of any rights that they may have thereunder.

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

(a) Withdraw and withhold all recognition from The Horton & Hubbard Employees Union, or any successor thereto, as the representative of any of its employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have been certified by the National Labor Relations Board.

(b) Post at its plant, Somerville, Massachusetts, copies of the notice atttached hereto and marked "Appendix A".[2] Copies of said notice, to be furnished by the Regional Director of the First Region, shall, after being duly signed by Respondent or by its representative, be posted by 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the First Region in writing within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

[2] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

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 interrogate our employees concerning their union affiliation, or threaten them with economic reprisals because of their union membership affiliation, and activities, or in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to joint or assist INTERNATIONAL HANDBAG, LUGGAGE, BELT AND NOVELTY WORKERS' UNION, A. F. L., 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, or to refrain from any or all of such activities except to the extent that such right may be permitted by the provisions of Section 8 (a) (3) of the Act.

WE WILL withdraw and withhold all recognition from THE HORTON & HUBBARD EMPLOYEES UNION, or any successor thereto, as the representative of any of our employees for the purpose of collective bargaining, unless and until said labor organization shall have been certified by the National Labor Relations Board as the bargaining representative.

WE WILL cease performing or giving effect to our agreement of July 11, 1950, with THE HORTON & HUBBARD EMPLOYEES UNION, or to any modification, extension, supplement, or renewal thereof or to any other contract, agreement, or understanding entered into with said labor organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said organization shall have been certified by the National Labor Relations Board.

HORTON-HUBBARD MFG. CO.,
Employer.

By ----------
(Representative) (Title)

Dated ----------

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. Joseph Lepie, for the General Counsel.

Gordon & Epstein, by *Mr. Maurice Epstein,* of Boston, Mass., for the Respondent.

Mr. Joseph E. Donovan, of Boston, Mass., for the Independent.

Messrs. Raymond A. Dooley and *John P. Holly,* for the A. F. L.

STATEMENT OF THE CASE

Upon a charge duly filed by International Handbag, Luggage, Belt and Novelty Workers' Union, A. F. L., herein called the A. F. L., the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director of the First Region, Boston, Massachusetts, issued his complaint dated August 3, 1950, against Horton-Hubbard Mfg. Co., 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 (a) (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge and the complaint, together with notice of hearing thereon, were duly served on all the parties, including The Horton & Hubbard Employees Union, herein called the Independent.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent: (1) by various acts detailed in the complaint, initiated, sponsored, and formed the Independent on about March 9, 1950, and since that date has dominated, supported, and interfered with the administration of the Independent, in violation of Section 8 (a) (2) of the Act; (2) by various warnings and threats of reprisal, all detailed in the complaint, and by inquiring of the union affiliation of its employees, interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

The Respondent, in its answer, denied the commission of the alleged unfair labor practices. In its answer the Independent denied that it was the recipient of any assistance or domination by the Respondent.

Pursuant to notice, a hearing was held on August 15, 16, 17, and 18, 1950, at Boston, Massachusetts, before George Bokat, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. All the parties except the A. F. L. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. At the conclusion of the General Counsel's case-in-chief the Respondent's motion to dismiss the complaint was denied. The parties waived their right to present oral argument and only the Respondent availed itself of the opportunity afforded all the parties to file briefs with the undersigned.

Upon the entire record in the case and from observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Maine corporation, is engaged in the manufacture, sale, and distribution of overnight luggage and related products at its plant and principal office in Somerville, Massachusetts. During a 12-month representative period preceding the date of the hearing the Respondent purchased raw materials in excess of $100,000, of which approximately 50 percent was received from points outside the Commonwealth of Massachusetts. During the same period the Respondent's sales exceeded $100,000, of which approximately 50 percent was sold and shipped to points outside the Commonwealth of Massachusetts.

The Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVE

International Handbag, Luggage, Belt and Novelty Workers' Union, A. F. L., and The Horton & Hubbard Employees Union are labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Summary of events*

There is no substantial dispute as to the facts. Most of the events hereinafter described occurred in the month of March 1950, at which time the Respondent had in its employ about 85 nonsupervisory employees. The Respondent's plant takes up 3 floors, each in charge of a foreman or forelady, as the case may be. Next in ascending order of supervisory hierarchy comes Philip Freedman, with the title of either general manager of superintendent. Above Freedman is Harold Caro, vice president, topped by his father, Abraham Caro, as president. The General Counsel contends that Louis Cataldo, who works in the shipping department and is known as the "head shipper," is a supervisor within the meaning of the Act, and therefore Cataldo's role, hereinafter described, in assisting in the formation of the Independent is attributable to the Respondent. I am satisfied and find, upon the basis of the entire record, that Cataldo is not a supervisor within the meaning of the Act.[1]

Prior to February 1950, the Respondent's employees were unorganized. At about this time, primarily through the efforts of employee Robert Lewis, the A. F. L. initiated an organizational campaign. An A. F. L. meeting as part of this campaign was set for March 9 in Lewis' home, the latter having invited a number of his fellow employees to attend Apparently by coincidence, President Caro, having heard of the A. F. L. organizational efforts, decided to speak to all of his employees on the same day. Summoned by the Respondent's public address system, the employees, including the supervisory force, assembled on the third floor of the plant at 4:30 p m. Quitting time for most of the employees was at 5 p. m.

Caro spoke extemporaneously except for reference to a newspaper clipping about "thousands of people" being out of work. He said he knew that the A. F. L. was trying to organize the employees and "that he couldn't stop" them from joining it, that as "Americans" they could use their "own free mind" and "judgment." Caro expressed himself as having "treated everybody fairly and squarely" and if anyone thought otherwise he would like to know about it, and indicated that he was "a little put out that anybody wanted any union at all" in his shop. Caro referred to the various benefits the employees were receiving such as vacations with pay, holiday pay, and Christmas bonuses, "and if the A. F. L. came in, maybe" they "wouldn't receive these benefits," although they might get more pay. But Caro pointed out that if the employees got higher wages it meant higher prices for his products and fewer orders, and therefore less work for them. Caro called attention to the fact that he had kept them employed full time each year during the slow season by building up a large inventory and since "he had 20,000 pieces of luggage on hand . . . he could close the plant for an indefinite period of time without hurting his own business in any way."[2]

[1] Although Cataldo sometimes directs the work of the two other shippers in his department, the evidence shows that he transmitted instructions of a routine nature which did not require the use of independent judgment On the state of this record I cannot find that Cataldo had the power responsibly to direct the work of these shippers. Ct. *Chautauqua Hardware Corporation,* 92 NLRB 1518.

[2] These findings as to Caro's speech are based upon an evaluation of the testimony of several witnesses, called by the General Counsel, who testified about this incident. Neither the Respondent nor the Independent called any witnesses.

The idea to have an independent union represent the employees rather than the A. F. L. appears to have originated primarily with employee Arthur Pressman on the day following Caro's speech. After discussing it with three of his fellow workers, Pressman decided to canvass the employees by having them sign a petition to indicate their choice of a "shop union." Or in the words of Pressman, "I told them what they could expect; if they wanted to sign, I could hope that Mr. Caro would recognize us as a union and keep us with all the present conditions that we had—take nothing away from us."

The solicitation of the employees started at about 4 p. m. on March 10. Pressman, unlike most of the other employees, was through with his workday at that time. Aiding Pressman were two other employees—Cataldo and John Vigilante. Giving each of them a sheet of paper Pressman said, "we would start a union of our own and have our own representation, rather than have an outside union bargaining for us" and "show Mr. Caro that the people in the shop wanted to represent themselves and have an independent union." These three then openly solicited the signatures of the employees while they were at work and succeeded in obtaining the signatures of practically all of the employees.[3]

The same afternoon, Pressman, armed with the signatures, and accompanied by Cataldo, Lewis, and employee Paul Kelley went to President Caro's office. There, Pressman told Caro that "the majority of the employees want a shop union and gave him the papers with the names . . ."[4] Caro replied that he would take the matter up with his lawyer and indicated "they'd get working on it over the weekend." The meeting was on a Friday and the plant was not operating on Saturday or Sunday.

The following Monday morning, March 13, Harold Caro asked Cataldo if he would be willing to go to a lawyer's office to read a contract that the Respondent was apparently offering to the shop union. Neither wages, hours, working conditions, nor a contract had previously been discussed or requested by anyone on behalf of the unformed, or at best, nascent or incipient shop union. Cataldo notified Pressman, Lewis, and Kelley of the meeting and asked them to accompany him to the lawyer's office. Cataldo then circulated throughout the plant and got authority, by individual solicitation, from practically all of the employees for Pressman, Kelley, Lewis, and himself to sign a contract in their behalf. At about 11 a. m. that morning these four employees, accompanied by

[3] Permission of management to solicit the employees was not sought. Solicitation for nonunion purposes had previously taken place in the plant but whether permission had first been obtained is not clear from the record. It is clear however, that at least two supervisors knew of the purpose of the solicitation on March 10. "While I was asking these employees to sign the paper" testified Vigilante, "Evelyn Golden the Boss of these girls asked me what I was doing and I told her I am just getting names for our shop union and she turned and walked away and I went on asking the girls to sign the paper." Employee May Sugrue asked Foreman Rudolph Freedman how he "thought they were making out with the paper and he said he guessed everybody had signed it."

[4] There is some confusion in the record as to whether Pressman also asked Caro to recognize the shop union as exclusive bargaining representative. I am satisfied and find, based upon an evaluation of the testimony of Lewis, Cataldo, and Pressman, that no specific request as such was made. The shop union had not yet been formed and no name for it had been selected. The employees had merely indicated their preference for a shop union. So when Pressman testified "we spoke as individuals informing [Caro] that a majority of the employees wanted a shop union" and did not represent themselves as the bargaining representative of the employees, he was at this point in his testimony accurately depicting what had occurred. I believe however, that Pressman was trying to get Caro's reaction to the proposition that if the majority of the employees formed their own shop union whether the Respondent would deal with it and, although inarticulately phrased, probably managed to convey this idea to Caro. The latter was receptive to the suggestion. Caro replied, according to Lewis' testimony, "If that is what you want, you can have it."

Harold Caro, went to the office of Gordon and Epstein, the attorneys of record in this proceeding for the Respondent.

There, a contract which had evidently been prepared and typed prior to the meeting, was presented to the committee representing the employees by attorney Epstein, after Epstein had ascertained the authority of the committee to sign a contract The name of the union already typed in the prepared contract was the Horton-Hubbard Employees' Shop Union.[5] The contract states that this union having "been designated in writing by over 90 percent of the production and maintenance employees" is recognized by the company as the exclusive bargaining representative of these employees Another clause worthy of note provides: "No changes shall be made by the Company in any established working conditions without notifying the union in advance and giving the Union an opportunity to discuss any such proposed change with the employees affected and with the management"[6] Epstein read and explained each of the clauses of the proposed agreement and all were accepted Only one suggestion came from the employees and this was added to the contract by Epstein after some discussion about it had taken place The contract, which was for a period of 1 year and from year to year thereafter unless terminated by a 60-day notice, was then signed by the four employees on behalf of the above-named union and by Harold Caro on behalf of the Respondent

After spending about 2 hours at Epstein's office the committee had lunch and then returned to the plant. There, Cataldo announced over the Respondent's public address system that a meeting of all employees would take place in the shop at 5 p m[7] At this meeting Pressman announced the execution of the contract and read it to the employees "I asked them if there was any questions about the contract and no one made any reply and the meeting broke up," testified Pressman

Steps to bring the Independent formally into existence began the next day, March 14, with the election of a grievance committee composed of two employees from each of the Respondent's four departments. The balloting took place during lunch time in the plant on company paper supplied by Cataldo. The following day, at quitting time, the grievance committee met in the plant, the announcement for the meeting coming over the public address system. The committee decided to have four officers and to hold an election for that purpose. A general meeting of all the employees took place in the plant on March 22 at the end of the workday after notice thereof had been posted on the Respondent's bulletin board A secretary was elected without opposition. Nominations were received for the remaining offices of president, vice president, and treasurer and it was decided to hold a primary and a runoff election to determine the winners. The primary election was held the following day on ballots prepared on company paper by Cataldo and distributed by him to the employees at about 11 a. m As the employees checked out for lunch that day, Cataldo, who had

[5] The name subsequently adopted by the Independent after its formation was "The Horton & Hubbard Employees Union" Who supplied the name appearing in the contract to Epstein or how he happened to use it is not explained in the record It is clear from the record however, that the employees had not as yet selected a name for their unborn organization Lewis, the only employee to testify on this subject stated that the first time he had heard or seen the name was when it appeared in the contract presented by Epstein and that no previous discussion thereof had ever taken place in his presence.

[6] During the meeting in Epstein's office there was no discussion about changing the existing wage scale or other working conditions. Epstein, however, did read from a copy of a contract that the A F L had with another luggage manufacturer and pointed out that it provided for a wage scale less than that paid by the Respondent and for less paid holidays

[7] Apparently the first time an employee had ever used the public address system

stationed himself next to the time clock, checked off the name of each employee as he cast his ballot in a box placed on a nearby bench. The runoff election was conducted in a similar fashion on the day following the primary with the names of the two highest nominees for each office appearing on the ballot. The results of each election were posted on the company bulletin board. Dues which had been fixed at 50 cents a month were collected at the plant during the formative period of the organization by the treasurer, later at regular meetings held outside the plant. Following the election of officers no further meetings of the Independent took place in the plant.

The name of the Independent evidently was not selected until March 29 when a meeting of the officers and grievance committee took place at the home of the president. "At this meeting" testified Pressman, "we took up the matter of drawing a constitution. We first selected the name of our union and called it the Horton & Hubbard Shop Union." [8] A constitution and bylaws was prepared late the following month by Joseph Donovan, an attorney retained by the Independent, and sometime thereafter was adopted by the Independent. The March agreement was supplanted by a new and more comprehensive agreement executed on July 11, negotiations therefor being initiated at the request of the Independent. This agreement runs until December 31, 1951, and yearly thereafter unless terminated by either party on 60 days' notice

Before discussing the legal conclusions to be reached upon the above findings of fact it is necessary to go back to about March 16 and describe several incidents involving Superintendent Freedman and employee May Sugrue. It will be remembered, that an A. F. L. meeting took place in Lewis' home on May 9. Sugrue lived in the same house as Lewis but did not attend the meeting and knew nothing about it. Freedman asked Sugrue if she knew about the A. F. L. meeting in Lewis' home. Sugrue replied that she did not. About an hour later Freedman summoned her to President Caro's office and with only the two of them present, asked her "several times" during the ensuing conversation whether she "was more interested in the shop as it was, or in having the A. F. L. in " Sugrue's only reply was that she was interested in her work. Freedman then repeated substantially what Caro had said in his March 9 speech to the employees, giving reasons, to quote Sugrue, why "we wouldn't be as well off with the [A. F. L.] as we were at the present time." Freedman also told Sugrue that the employees "may not receive turkeys at Thanksgiving, or the vacations with pay, or holidays, or Christmas bonuses."

Not long after these conversations, Freedman complained to Sugrue that she had violated "a confidence" by telling other employees about his inquiry of Sugrue about the A. F. L. meeting in Lewis' home. Freedman also told her there was "talk" around the shop of Sugrue being active in behalf of the A. F. L. "I told him I didn't like the talk. And he told me it must be true because he heard it from three or four people," testified Sugrue. She was upset and annoyed by these rumors because they were not true. A few weeks later Sugrue was summoned to Caro's office. There, after being informed by Superintendent Freedman that Harold Caro wanted to talk with her, Caro entered the office. Freedman then said "there had been rumors around the shop about [Sugrue] answering questions for the A. F. L., and about [her] saying it was a slave shop" and "wasn't satisfied." Upon Caro's inquiry as to whether this was true Sugrue denied it. Caro then said he was not interested in any rumors, that Sugrue had a right to be active in behalf of the A. F. L. if she wanted to, and that he was satisfied with her work which was all that mattered to him. Caro also stated that his father "had made his mind up that whatever the people wanted, they'd have; if they wanted an

[8] The name actually selected was The Horton & Hubbard Employees Union.

A. F. L. they'd have it, but from that point on it would be strictly business and not friendly like it had been." Sometime during the discussion Freedman offered the opinion that Sugrue had been talking about the company because at one time during her employment while she had been making a dollar an hour she had quit and when she returned the only job then open to her paid only 80 cents an hour. Freedman then repeated to Caro what he had previously told Sugrue, that he would gradually increase her pay to its old rate but "he couldn't do it then on account of the . . . A. F. L. trying to organize the shop."

Concluding Findings

1. As to interference, restraint, and coercion

I find that the Respondent has interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act by the following statements and conduct: (a) President Caro's statement in his speech to the employees on March 9, that maybe "they wouldn't receive" such existing benefits as vacations with pay, holiday pay, and Christmas bonuses "if the A. F. L came in," and Superintendent Freedman's similar statement to May Sugrue; (b) President Caro's statement that "he could close the plant for an indefinite period of time" since "he had 20,000 pieces of luggage on hand",[9] (c) Superintendent Freedman's harassment of Sugrue because he believed she was an A F. L adherent. This includes his questioning Sugrue about the A F. L meeting in Lewis' home and her interest in that organization,[10] and his statement that he could not increase Sugrue's pay at that time because of the A. F. L. organizational campaign. I also find Harold Caro's assurances of neutrality to Sugrue under the circumstances here disclosed, insufficient to overcome the coercive effect of Freedman's conduct.

2. As to support and assistance of the Independent

The genesis of the Independent started with the fear of some of the employees, stemming from President Caro's speech on March 9, that they might lose what they considered as favorable terms and conditions of employment if the A. F. L. succeeded in its organizational campaign. Believing that they might be able to retain their favorable working conditions through the medium of a shop

[9] Contrary to the Respondent's contention I do not find everything said by President Caro to be privileged under Section 8 (c) of the Act That section expressly excludes from its protective ambit statements containing a "threat of reprisal or force or promise of benefit." While some of Caro's remarks indicated that the employees' loss of work might flow solely as a result of the play of economic forces if the plant was unionized and not as the result of any voluntary action on his part, those found above to be violative of the Act do not appear to have this protective coloration These were couched in terms indicating what *Caro* could or might do in the event of unionization Caro's warning that he could shut the plant for an indefinite period of time could reasonably be construed by the employees as a threat that it might have to close if unionized, and therefore must have necessarily affected their judgment and freedom of choice guaranteed by the Act. Likewise, Caro's assertion that the employees might not continue to receive their existing benefits contained an implied threat of possible reprisal. That it was so construed by the employees is apparent from Pressman's testimony, that in canvassing the employees the following day to sign the petition favoring a shop union, Pressman expressed the hope that Caro might "keep us with all the present conditions that we had—take nothing away from us"

[10] *Standard-Coosa-Thatcher Company,* 85 NLRB 1358. The totality of Freedman's conduct towards Sugrue was an unwarranted invasion of her right of privacy of opinion about the A. F. L., a right protected by Section 7 of the Act, especially where, as here, it so clearly constituted a restraint upon her freedom of choice. The Board has consistently held that interrogation of employees concerning any aspect of union activity to be violative of Section 8 (a) (1) of the Act

union, the great majority of the employees indicated their choice of that *kind* of an organization when they signed petitions circulated throughout the plant on company time with the knowledge of the Respondent. The petitions were then presented to President Caro as proof that the majority of the employees wanted their own shop union Caro was then asked, in effect, whether the Respondent would deal with such an organization Since no organization had as yet been formed it is evident that the employees, who were inexperienced in such matters, were seeking the advance blessing of the Respondent for that kind of an organization before forming one While Caro seemed amenable he preferred seeking the advice of his attorney before giving an answer. This meeting occurred on a Friday afternoon. The following Monday morning the Respondent gave its answer in the form of a written contract recognizing the Horton-Hubbard Employees' Shop Union as exclusive bargaining representative and retaining the then existing terms and conditions of employment with one addition. The organization named in the contract had not as yet been formed nor had any name been voted on by the employees, although they had authorized a committee to execute a contract in their behalf It was not until *after* the execution of this contract that the Independent was formed on the Respondent's premises with the use of some of its time and facilities and with the apparent knowledge and acquiesence of the Respondent The name of the organization was not chosen until March 29, 16 days after the execution of the contract, and while substantially like, is not identical with the one in the contract

The Respondent concedes "that there undoubtedly was some 'assistance' to the Independent Union in that they did use the Company's premises and some Company time in the formation and early administration of the Independent Union" But argues the Respondent, in the absence of any evidence that similar privileges were requested by and denied to the A F. L. the assistance is not illegal, and cites *N. L R B* v. *Brown Co*, 160 F. 2d 449 (C. A. 1), and other cases of like import in support of its position I find these cases distinguishable from the case at bar and not apposite In *Republic Aviation Corp.* v. *N L R B*, 324 U. S 793, the Supreme Court said that the Act "did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice On the contrary, that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms" Even "minor favors . . without discrimination between employee organizations" are within the Board's cognizance (*N. L R B* v *Southern Bell Telephone & Telegraph Co*, 319 U. S 50), and "Intimations of an employer's preference, though subtle, may be as potent as outright threats of discharge" (*N L. R B.* v *Link-Belt Co*, 311 U S. 584)

The Respondent's coercive opposition to the A F. L as evidenced by the speech of President Caro and the statements and conduct of Superintendent Freedman, its precipitate action in granting exclusive recognition and a contract to an unformed organization, and the subsequent assistance that organization concededly received from the Respondent during its formative period, all portray a congery of events which lead to the definite conclusion that the Respondent, in violation of Section 8 (a) (2) of the Act, rendered illegal assistance to the Independent It would have been useless for the A F. L to ask the same privileges accorded to the Independent because the A F L. was already faced with a fait accompli, to wit, the Independent had already received a contract recognizing it as the exclusive bargaining representative *before* the acts of assistance in its formation took place Since the Respondent at this point could not legally grant exclusive recognition to the A. F. L as well, permis-

sion from the Respondent for the A. F. L to compete with the Independent in organizing the employees on company time and property would be of no benefit. Under these circumstances the A F L could not possibly have received equality of treatment from the Respondent[11] I therefore find that the acts and conduct of the Respondent heretofore described constituted support and assistance to the Independent in violation of Section 8 (a) (2) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent, set forth 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 thereof

V. THE REMEDY

Having found that the Respondent has engaged in the unfair labor practices set forth above, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designated to effectuate the policies of the Act.

Although finding that the Respondent's conduct constituted assistance and support to the Independent, I am not persuaded, on the basis of the entire record, and in line with the Board's policy as enunciated in *The Carpenter Steel Company*, 76 NLRB 670, that the Respondent's conduct, despite some suspicious circumstances, constituted domination of the Independent as well. I shall therefore not recommend that the Respondent disestablish the Independent but shall recommend that it withdraw recognition from the Independent as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have been certified by the Board. I shall also recommend that the Respondent cease giving effect to its contract with the Independent or to any modification or extension thereof Nothing herein shall be taken, however, to require the Respondent to vary those wages, hours, and other substantive features of its relations with the employees which it has established in the performance of any agreement as extended, renewed, modified, supplemented, or superseded.

I am also persuaded that the Respondent's conduct poses a threat that it might in the future commit other unfair labor practices persuasively related to those found herein. The preventive purposes of the Act will be thwarted unless the order is coextensive with this threat It will therefore be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following

CONCLUSIONS OF LAW

1 International Handbag, Luggage, Belt and Novelty Workers' Union, A. F. L., and The Horton & Hubbard Employees Union are labor organizations within the meaning of Section 2 (5) of the Act.

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

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[11] Cf *N L R. B* v *Stowe Spinning Co*, 336 U S 226

3. By contributing support and assistance to The Horton & Hubbard Employees Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) 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.

[Recommended Order omitted from publication in this volume.]

THE STILLEY PLYWOOD COMPANY, INC. *and* INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS OF THE U. S. AND CANADA, A. F. L. *Case No. 10-CA-420. May 31, 1951*

Decision and Order

On August 22, 1950, Trial Examiner Isadore Greenberg issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged 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 attached hereto. The Trial Examiner found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended that those allegations of the complaint be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and briefs in support of their exceptions.

The request of the Respondent for leave to argue the case orally before the Board is denied because the record in the case and the briefs submitted by the parties, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made 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 with the following additions and modifications:[1]

1. We agree with the Trial Examiner that the Respondent by engaging in the conduct described in the Intermediate Report, including

[1] The Intermediate Report contains certain misstatements of fact, none of which affect the Trial Examiner's or our ultimate conclusions. Accordingly, we make the following corrections: (1) The Trial Examiner states that the complaint alleges that the Respondent through its unfair labor practices caused its employees to go on strike on or about April 26, 1948, whereas the allegation of the complaint is that the employees went on strike on or about August 26, 1948; (2) the Trial Examiner found that "after the election which the Union won, Nelson told Robinson that Stilley had threatened to 'shut his mill down' . . ." whereas we find that this event occurred before the election.