

In the Matter of MACKIE-LOVEJOY MFG. Co. and INTERNATIONAL  
FUR AND LEATHER WORKERS UNION, C. I. O.

Case No. 13-C-2953.—Decided December 13, 1946

*Mr. Gustaf B. Erickson*, for the Board.

*Fyffe and Clarke*, by *Mr. Albert J. Smith*, of Chicago, Ill., for the respondent.

*Messrs. Clifford T. Johnson and Lew Goldstein*, of Chicago, Ill., for the CIO.

*Mr. Walter J. Cichowski*, of Chicago, Ill., for the Independent.

*Mr. Seymour Cohen*, of counsel to the Board.

DECISION

AND

ORDER

On October 11, 1946, Trial Examiner Wallace E. Royster 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 attached hereto.

No exceptions to the Intermediate Report were thereafter filed with the Board.

The Board has reviewed the rulings of 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 and the entire record in the case, and hereby adopts the findings, conclusions,<sup>1</sup> 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

<sup>1</sup> The section of the Intermediate Report entitled "Conclusions of Law," however, shall be, and it hereby is, amended to include the following paragraph

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

Board hereby orders that the respondent, Mackie-Lovejoy Mfg. Co., Chicago, Illinois, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Domnating or interfering with the formation of the Independent Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Independent Union or to any other labor organization of its employees;

(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 Fur and Leather Workers Union, C. I. O., 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) Withhold all recognition from the Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Independent Union as such representative;

(b) Post at its plant in Chicago, Illinois, copies of the notice attached hereto, marked "Appendix A."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Thirteenth 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 in its plant, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

(c) Notify the Regional Director for the Thirteenth Region (Chicago, Illinois) 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:

<sup>2</sup> In the event that this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING."

We hereby disestablish the Independent Union as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize it or any successor thereto for any of the above purposes.

We will not dominate or interfere with the formation or administration of any labor organization of our employees or contribute financial or other support to it.

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 Fur and Leather Workers Union, C. I. O., 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. All our employees are free to become or remain members of this union or any other labor organization.

MACKIE-LOVEJOY MFG. CO.

*Employer.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative)

(Title)

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. Gustaf B. Erickson*, for the Board

*Fyffe and Clarke*, by *Mr. Albert J. Smith*, of Chicago, Ill., for the respondent.

*Messrs. Clifford T. Johnson and Lew Goldstein*, of Chicago, Ill., for the CIO.

*Mr. Walter J. Cichowski*, of Chicago, Ill., for the Independent.

#### STATEMENT OF THE CASE

Upon a charge duly filed on June 26, 1946, by International Fur and Leather Workers Union, C. I. O., herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated August 29, 1946, against Mackie-Lovejoy Mfg. Co., Chicago, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaged in unfair labor practices within the meaning of Section 8 (1) and (2) 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, the CIO, and the Independent Union.

With respect to the unfair labor practices the complaint alleged in substance, that the respondent on or about June 25, 1946, sponsored and formed the Independent Union and since that date dominated and contributed support to it. The complaint further alleged that the respondent from about June 1, 1946, disparaged the CIO, threatened reprisals to its employees who joined or assisted

the CIO, and threatened to close its plant in the event the CIO were designated by its employees as bargaining representative. In its verified answer dated September 9, 1946, the respondent admitted the jurisdictional allegations of the complaint but denied the commission of unfair labor practices.

Pursuant to notice, a hearing was held on September 12, 1946, in Chicago, Illinois, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the CIO and the Independent Union by their respective officials. At the opening of the hearing the Independent Union, herein called the Independent, made oral motion to intervene. The motion was granted without objection. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the conclusion of the hearing, counsel for the respondent argued orally on the record. All parties were granted until September 17, 1946, for the purpose of filing briefs or proposed findings and conclusions or both. None have been received.

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

#### FINDINGS OF FACT

##### I THE BUSINESS OF THE RESPONDENT

The respondent, a corporation, has a plant in Chicago, Illinois, where it is engaged in the manufacture and sale of clothes hangers and novelties. Of the steel, iron, wire, and other raw materials received at its Chicago plant each year, more than \$100,000, in value is shipped to Chicago from points outside the State of Illinois. Of its annual sales of finished products, more than \$100,000, in value is shipped from Chicago to points outside the State of Illinois.<sup>1</sup>

##### II THE ORGANIZATIONS INVOLVED

International Fur and Leather Workers Union, affiliated with the Congress of Industrial Organizations, and the Independent Union, unaffiliated, are labor organizations admitting to membership employees of the respondent.

##### III THE UNFAIR LABOR PRACTICES

Formation of the Independent; interference, restraint, and coercion

###### 1. The facts

In early June 1946,<sup>2</sup> respondent's employees were solicited to join the CIO and, according to the credited and undenied testimony of Clifford T. Johnson, a representative of that organization, a majority of them signed membership-application cards. On June 25, a notice was posted by one of respondent's foremen, Stanley, on the bulletin board where notices to employees customarily were posted, informing the employees of a meeting to be held that afternoon on the third floor of the factory building. The meeting, during the working hours of the day shift, was attended by most of the employees.<sup>3</sup> Three foremen,

<sup>1</sup> These findings are based upon the jurisdictional allegations of the complaint as admitted in the respondent's answer.

<sup>2</sup> All dates mentioned herein are in 1946 unless otherwise stated.

<sup>3</sup> Ollie V. Phillips, the Independent's secretary, so testified. Read in its context, however, the undersigned is of the opinion that Phillips' testimony had reference only to the employees on the day shift and it is so found.

Stanley, Ernie, and Joe,<sup>4</sup> and Assistant Superintendent Riddell were present. Superintendent Walker presided. Walker opened the meeting by inquiring of the employees why they wanted the CIO to represent them and suggesting that the colored workers were the ones most interested in that organization. Some employees volunteered that they were dissatisfied with the respondent's wages, its policy with respect to vacation and holiday pay, and with the production required of them on certain jobs. Walker answered that he would present these complaints to his superiors for consideration and went on to say that, for the period of its existence, there had been no "outside interference" by labor organizations with the respondent or its employees and that he would like to preserve that condition. He asserted that such an increase in wages as the CIO would undoubtedly demand was beyond the ability of the respondent to meet and that, as a result of CIO organization, strikes might occur which might lead to the closing of the plant with consequent loss of employment. Walker then advised the employees to form their own organization and assured them that they could accomplish as much in that fashion as by joining the CIO. All employees were paid for the time spent in the meeting.<sup>5</sup>

On or about June 27, again advertised by notice on the bulletin board in the plant and again during the working hours of the day shift, a second meeting was held in the same factory space.<sup>6</sup> The three foremen and Assistant Superintendent Riddell were present throughout the meeting. Walker again presided and in answer to the complaints submitted at the first meeting, announced a general wage increase of 10 cents an hour,<sup>7</sup> the institution of a paid vacation plan, and that production ratings would be given study. He again suggested that the employees form their own organization. At its conclusion, Riddell handed individual employees' designations in the following form with the suggestion that after signing they be deposited in a ballot box on the first floor of the building.

I, the undersigned, am in favor of joining an Independent Union composed of employees of the Mackie-Lovejoy Mfg. Co., and I authorize the officers of this union to represent me in negotiations with my employer for the purpose of collective bargaining on wages, hours and conditions of employment.

Signed \_\_\_\_\_  
Dated \_\_\_\_\_

Sometime during the following week, again in response to a notice posted on respondent's bulletin board, again during working hours, and again in the same place, a third meeting of employees was held at which none of the foremen or supervisors were present. The meeting was attended by 75 or 80 employees representing all three shifts. Without voting on the question of forming the Independent and without announcement of the number of employees favoring such action, its officers were nominated and elected. To the date of the hearing, no request of recognition had been made of the respondent and no further member-

<sup>4</sup> Testimony that these foremen had authority to hire and discharge was not contradicted. Presumably "Ernie" and "Joe" are given names. Their last names do not appear in the record.

<sup>5</sup> It was so stipulated at the hearing.

<sup>6</sup> Phillips testified that he was paid for the time he spent in attendance. Considering that the second meeting was only a continuation of the first and that all employees were paid for attendance at the first meeting, the undersigned finds that they were compensated as well for their attendance at the second meeting.

<sup>7</sup> This gain was partially offset by the withdrawal of a 10-percent bonus theretofore paid those who worked regularly.

ship meeting had been held. In late July, while on the respondent's premises, the Independent's president distributed leaflets to the employees attacking the CIO and extolling the respondent. The leaflet indicated that the Independent's dues would be less than \$2.00 a year. It does not appear however, that dues have been assessed or collected.

## 2. Conclusions

Neither the Independent nor the respondent called witnesses or offered evidence at the hearing so that testimony of the Board's witnesses, detailed above, standing undisputed, is credited. Counsel for the respondent argued, however, that (1) the respondent's premises afforded a convenient meeting place for the employees and its use for that purpose constituted no evidence of support or assistance, and (2) the respondent was constitutionally privileged to discuss with and recommend to the employees what action they should take with respect to self-organization.

There is no merit in these arguments applicable to the factual findings herein. The use of the respondent's premises for the meetings was not at the request of the employees. At least the first two were called by the respondent and those attending were paid as if at work. All meetings were heralded by notices on the respondent's bulletin boards and all were held during working hours. The undersigned finds that the employees attended these meetings not in the exercise of their rights under the Act but in obedience to the summons of their employer. The second argument is no more persuasive for the constitutional privilege raised is not a defense. Granting that an employer may point out to his employees the advantages of one kind of organization as contrasted with another and that, absent coercion, he may urge them to accept the one and to repudiate the other, he may not impose upon them the organization of his choice. Here, the conception of the Independent, the arguments in support of its formation, and the impetus to give it birth, all were supplied by the respondent. The result, as the respondent intended, was to deprive the employees of their right to be represented by an agency of their choice. The Independent was the creature of the respondent.

The undersigned finds that by dominating and interfering with the formation of the Independent and by paying those who attended the meetings, thereby contributing financial support to it, the respondent violated Section 8 (2) of the Act. It is further found that by urging its employees to refrain from joining the CIO, coupled with the granting of a wage increase to discourage membership in the CIO and the warning that organization by the CIO might jeopardize employment, the respondent interfered with, restrained and coerced its employees in the exercise of their rights under Section 7 of the Act and thereby violated Section 8 (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 described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to constitute unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V THE RIMLBY

Having found that the respondent has engaged in certain unfair labor practices by dominating and contributing support to the Independent it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because of the respondent's unlawful conduct and its underlying purpose, the undersigned is of the opinion that the unfair labor practices heretofore found are persuasively related to the other unfair labor practices proscribed by the Act and that the danger of their commission in the future is to be anticipated from the respondent's conduct in the past. Unless the order is coextensive with the threat, the preventive purpose of the Act will be thwarted. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thus minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the above findings of fact, and upon the entire record, the undersigned makes the following:

## CONCLUSIONS OF LAW

1. International Fur and Leather Workers Union, C. I. O., and the Independent Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. By creating, dominating and contributing financial and other support to the Independent Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

3. 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 (1) 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, Mackie-Lovejoy Mfg. Co., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or supporting the Independent Union or any other labor organization of its employees;

(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 Fur and Leather Workers Union, C. I. O., 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 undersigned finds will effectuate the policies of the Act:

(a) Withhold all recognition from the Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Independent Union as such representative;

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

(c) Notify the Regional Director for the Thirteenth Region (Chicago, Illinois), in writing within ten (10) days from the date of 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, respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. 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 203.39, 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.

WALLACE E. ROYSTER,  
*Trial Examiner.*

Dated October 11, 1946

#### APPENDIX A

##### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner 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 hereby disestablish the Independent Union as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize it or any successor thereto for any of the above purposes.

We will not dominate or interfere with the formation or administration of the Independent Union or with the formation or administration of any other labor organization of our employees or contribute financial or other support to it.

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 Fur and Leather Workers Union, C. I. O., 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. All our employees are free to become or remain members of this union or any other labor organization.

MACKIE-LOVEJOY MFG. Co,  
*Employer.*

Dated-----

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

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