

ENGLAND BROTHERS, INC. *and* NEW ENGLAND JOINT BOARD, RETAIL,  
WHOLESALE AND DEPARTMENT STORE UNION, CIO. *Case No. 1-CA-*  
*958. May 23, 1952*

### Decision and Order

On November 14, 1951, Trial Examiner Bertram G. Eadie issued his Intermediate Report in this proceeding, finding that the Respondent engaged and is 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 also found that the Respondent had not engaged in certain other alleged unfair labor practices. Thereafter, the Respondent, the General Counsel, and the Union filed exceptions to the Intermediate Report and supporting briefs.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner 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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. We find in agreement with the Trial Examiner that the Respondent is engaged in commerce within the meaning of the Act. In so finding, we rely not only upon the facts found in the Intermediate Report under the heading "The Business of the Respondent," but also upon the additional facts in a stipulation of the parties, executed subsequent to the hearing and hereby made a part of the record. Upon the basis of this stipulation, we find that the Respondent annually receives at its place of business within the Commonwealth of Massachusetts, merchandise valued in excess of \$1,000,000, which originates from points outside Massachusetts, and that the Respondent annually ships from its said place of business to points outside Massachusetts, merchandise valued in excess of \$25,000. We accordingly find upon the basis of the entire record and in accord with our jurisdictional policy that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.<sup>2</sup>

2. We agree with the Trial Examiner that the Respondent violated Section 8 (a) (1) of the Act by interrogating its employees concerning their union activity. In making his finding, the Trial Examiner relied only upon the following incidents:

<sup>1</sup> 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 Heizog and Members Murdock and Peterson].

<sup>2</sup> *Federal Dairy Co., Inc.*, 91 NLRB 638, *Stauslaus Implement & Hardware Co., Ltd.*, 91 NLRB 618

(a) Smith's interrogation of employee Descz: "Was it a big meeting last night?"<sup>3</sup> (b) Yeager's remark to employee Gaillardet: "I understand you are in the Union";<sup>4</sup> (c) Bossidy's<sup>5</sup> interrogation of employee Gaillardet as to whether she had signed a card for the Union.<sup>6</sup>

However, we also rely upon the following conduct, as fully set forth in the Intermediate Report: Supervisor Yeager's<sup>7</sup> interrogation of employee Chojnowski, and Supervisor Bossidy's interrogation of employee Nagelschmidt, in effect inquiring as to what advantages they thought they could derive from the Union.<sup>8</sup>

We do not agree with the Respondent's contention that these acts of interrogation do not violate the Act because of their allegedly isolated nature. Their very number belies the characterization. The conduct in question involved multiple incidents affecting a number of employees.<sup>9</sup> Nor do we agree that such conduct was "innocuous," as contended by the Respondent. The Board has consistently held that interrogation of this type constitutes interference, restraint, and coercion violative of the Act.<sup>10</sup>

3. The General Counsel and the Union except to certain observations made by the Trial Examiner on page 266 of the Intermediate Report, dealing with the absence of knowledge of these acts of interrogation by higher management. These observations and speculations are not here material and we therefore do not adopt them.

### Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, England Brothers,

<sup>3</sup> The Board has held that interrogations as to attendance at union meetings violates Section 8 (a) (1) of the Act. *A. J. Siris Products Corporation of Virginia*, 90 NLRB 132, 137; *Marr Knitting Inc.*, 90 NLRB 479.

<sup>4</sup> *Old Town Shoe Co.*, 91 NLRB 240.

<sup>5</sup> The Respondent urges that even if Bossidy made this statement, she was only a minor supervisor and, as such, her statements cannot be attributed to the Respondent. We do not agree. Bossidy testified that she was the head of the leather goods, jewelry, and hosiery department; that she was an assistant buyer, went out on buying trips like other buyers, that she directed and assigned the work of the employees in her department; that she arranged lunch hours and had the power to reprimand clerks when necessity required. On the basis of the above, we find that Bossidy is a supervisor within the meaning of the Act.

<sup>6</sup> *Shell Oil Co.*, 95 NLRB 952; *McKesson & Robbins, Inc.*, 92 NLRB 1432; *A. Kravitz & Company*, 89 NLRB 1415.

<sup>7</sup> Supervisor Yeager admitted that she "asked several people—quite a few" this question.

<sup>8</sup> The Board has held that this type of interrogation constitutes a violation of Section 8 (a) (1) of the Act. *Charbonneau Packing Corp.*, 95 NLRB 1166; *Forest Lawn Memorial Park Association, Inc.*, 97 NLRB 309.

<sup>9</sup> *Chesapeake & Potomac Telephone Company of West Virginia*, 98 NLRB 168.

<sup>10</sup> *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

Inc., of Pittsfield, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning attendance at union meetings, membership in labor organizations, inquiring of them concerning their expectation of gain from organizational activity or in any related 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 New England Joint Board, Retail, Wholesale and Department Store Union, CIO, 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 organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

(a) Post at its place of business at Pittsfield, Massachusetts, copies of the notice attached hereto and marked "Appendix A."<sup>11</sup> Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent or by its representatives, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of 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.

(b) 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.

## 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 attendance at union meetings, or their union affiliation, or inquire

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<sup>11</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order."

of them concerning their expectation of gain from union organizational activity, or in any related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist New ENGLAND JOINT BOARD, RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be permitted by the provisions of Section 8 (a) (3) of the National Labor Relations Act.

ENGLAND BROTHERS, INC.,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

### Intermediate Report

#### STATEMENT OF THE CASE

Upon an amended charge, filed July 2, 1951,<sup>1</sup> by Harry Irwin, president of New England Joint Board, Retail, Wholesale and Department Store Union, CIO, herein referred to as the Union, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel, and the National Labor Relations Board, herein referred to as the Board, by the Regional Director for the First Region (Boston, Massachusetts), issued a complaint against England Brothers, Inc., herein referred to as the Respondent. Copies of the charges and of the complaint were duly served on the Respondent. The complaint alleged that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein referred to as the Act.

With respect to the unfair labor practices, the complaint alleges that the Respondent, at numerous times during the period beginning on or about May 1, 1951, and continuing thereafter to the date of the issuance of the complaint, by its officers and agents, did interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, by various acts including the following without limitation: (a) Interrogating employees concerning their union membership; (b) interrogating employees concerning their attendance at union meetings, and that the acts of Respondent as above set forth constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

The Respondent filed its answer denying any unfair labor practices but admitted the allegation of the complaint to the effect that Respondent was and is engaged in commerce within the meaning of the Act.

<sup>1</sup> Original charge filed June 13, 1951.

A motion for a bill of particulars was demanded by Respondent and ordered by a Trial Examiner. No bill of particulars in accordance with the order was served on the Respondent. However, no testimony offered by the General Counsel was objected to by Respondent on the grounds that it had not been pleaded and no motion was made to bar offered testimony in that it was not in compliance with the order directing the issue of a bill of particulars.

Pursuant to notice, a hearing was scheduled and held on September 5, 1951, at Pittsfield, Massachusetts, before the undersigned Bertram G. Eadie, a Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were represented at the hearing by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Motions were made by Respondent at the close of the General Counsel's case and again at the close of the whole case for the dismissal of the complaint; the Trial Examiner reserved decision on these motions and now denies them. Motions were also made by General Counsel and counsel for Respondent to amend the pleadings to conform to the evidence; without objection from either counsel the motions were granted.

Both counsel argued orally at the close of the whole case. Briefs have been filed by counsel for both parties and have been considered by the Trial Examiner.

Upon the entire record in the case, from his observation of the witnesses, and upon examination of the exhibits in evidence, the Trial Examiner makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent is and has been at all times material herein, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office and place of business at Pittsfield, Massachusetts, where it is engaged in the business of operating a department store, selling the various types of merchandise usually handled by metropolitan department stores. It employs approximately 350 men and women in carrying on its establishment. The Respondent admitted in its answer that it causes, and continuously has caused at all times herein mentioned, large quantities of general merchandise used by it in its business to be purchased and transported in interstate commerce from and through various States of the United States other than the Commonwealth of Massachusetts, and causes, and continuously has caused at all times mentioned herein, substantial quantities of general merchandise to be sold and transported from its plant in interstate commerce to States of the United States other than the Commonwealth of Massachusetts.

The Trial Examiner therefore finds that Respondent is engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

New England Joint Board, Retail, Wholesale and Department Store Union, CIO, is a labor organization which admits to membership employees of the Respondent.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background

The Respondent conducts a large department store in the city of Pittsfield, Massachusetts. The Union inaugurated a campaign in that city in the spring of

1951 to unionize the employees of the various mercantile establishments of the city among which was the establishment of the Respondent.

Upon hearing that the employees of Respondent were being solicited by the Union as prospective members, Benjamin M. England, referred to herein as England, vice president and clerk of the Respondent, proceeded with Bertha Yeager, referred to herein as Yeager, personnel director of Respondent, to the office of Ely, King, Kingsbury & Lyman, attorneys at Springfield, Massachusetts. He there consulted with Mr. Corcoran,<sup>2</sup> as to the legal right of Respondent relative to the unionization campaign. He was accompanied at the conference by Yeager and Simon England, an officer of Respondent. Corcoran advised England as to the rights of Respondent under the Act and pointed out to him illustrations which would constitute unfair labor practices.

Upon England's return to Pittsfield and at the suggestion of Corcoran, he called a meeting of the Respondent's supervisors, about which he testified credibly as follows:

"A. Well, I told them that we, as a firm, felt that we were opposed to having a union in our store because we felt we would prefer to deal directly with our employees, rather than with them through any outside organization. I enumerated the past history of the store . . . its working conditions and its improvements . . . and stated definitely to my recollection, that while it was the right of any individual to join any organization they wanted, that was our opinion; that we would prefer not to have a union within our store, because we wanted to deal directly."

Also that . . . for their knowledge . . . whether a person signed a union card or was threatened, made no difference, whether they signed or didn't sign. They had the right to do what any individual wished. I told those facts to the supervisors and told them specifically that they should know those facts so that if they were asked, that they were not to go back and call departmental meetings but just keep those facts in their heads.

Q. Did you admonish them not to initiate any conversations along this line?

A. I told them only that I was telling them these facts so that when they were asked, when a conversation was brought up to them, they should have those facts, they were not to initiate conversations in order to call meetings.

Q. In other words, so that they wouldn't be speechless, you were putting these facts before them, just as you would on any of the other matters, is that true?

A. Yes.

While the campaign for unionization was in progress, some of the supervisory employees entered into conversations with other of the employees of Respondent which thereupon became the basis for the resulting charges of unfair labor practices on the part of Respondent. These incidents are fully set forth in the following section hereof.

#### B. *Interference, restraint, and coercion*

The overt acts charged as unfair labor practices in violation of the Act on the part of Respondent are as follows:

1. Yeager, a supervisory employee, in conversation with employee Chojnowski, with reference to the fact that his sales had not been in line with what he had done previously in the toy department, was told by him that the people who had been there longer than he had a following, which accounted for their better

<sup>2</sup> Hugh J Corcoran appeared as counsel for Respondent at the hearing

showing. Yeager suggested that she felt he could do better than he was doing, because he had done a very good job in the past, during the Christmas holidays. She suggested that he accept a transfer to the men's clothing department where there was a vacancy and that there would be an opportunity to increase his wages as a higher commission on sales was paid there. During the conversation the Union was discussed and Yeager in the course of it said, "What he [Chojnowski] felt the Union could do for the people that the store couldn't." His response was "more money."

2. Smith, a supervisory employee, carried on a conversation with employee Dunham as follows:

He [Dunham] made the statement one day that he [Dunham] was no longer interested in the Union for many reasons. I [Smith] naturally, asked him why. He told me several reasons why he wasn't.

3. Bossidy, a supervisory employee, conversed with employee Bigelow in which the following colloquy ensued, to wit:

A. I [Bossidy] asked her *what she thought the Union could do for her*, and she told me that she thought they could do more for her by letting her receive a larger salary; and that she was sure that there were others receiving a larger salary than she was, being a trainee, and I replied to her that that was a perfectly good reason. If she thought she could receive more through the Union, I didn't blame her for joining.

4. Smith, a supervisory employee, in conversation with employee Descz, the following colloquy took place, to wit:

The witness: "Yes. He [Smith] said, 'perhaps everything will be better when the Union gets in.' I said, 'I think probably it would.' He said, 'I am wondering what the advantages will be.' I said, 'Well, perhaps as far as salaries are concerned, it will be better.'

"He brought out the point that he didn't know what the buyers' position would be when the Union got into the store; and I said, 'I wouldn't know.' I think he was concerned about that."

\* \* \* \* \*

The witness: "Well he just more or less elaborated. . . ."

Trial Examiner Eadie: I don't want that. I want what he said, if anything, and what you said.

The witness: "It was more or less of a wisecrack, if anything. He said, 'Was it a big meeting last night?' I said, 'Yes it was quite a good meeting.'"

5. England, an official of Respondent, in conversation with employee Hattie Smith:

Q. And what did Mr. England say to you, and what did you say to Mr. England?

A. Well, nothing really against the Union. He said that was everyone's privilege. If they wanted to sign a card, they could. They didn't have to; it was just up to them.

Q. Were you asked any questions?

A. I was not asked any questions. During the conversation, we did talk a little union, but not on his say-so. It just came in our conversation, that's all.

6. Bossidy, a supervisory employee, in conversation with employee Gaillardet, asked her:

Just one question. Mrs. Bossidy asked me if I signed a card for the Union.

7. Yeager, a supervisory employee, in a conversation with employee Gaillardet said:

A. She [Yeager] says, "I understand you are in the Union," and I said, "Yes," and that is all there was to it.

8. Bossidy, a supervisory employee, in conversation with employee Nagelschmidt, the conversation proceeded as follows:

Q. What did Miss Bossidy say to you, and what did you say to Miss Bossidy?

A. Well, she just asked me what advantages I thought that the Union could give us, other than what we are getting now, or what the store would give us, and I said the only thing that I knew of would be more money, and that is what most of the girls want . . . a one percent commission.

Q. Did Miss Bossidy ask if you were a member of the Union?

A. No.

Q. Did she ask you how you felt about the Union?

A. No, I think those are my exact . . . the exact words that we both used. It wasn't a long conversation; it was very brief.

9. Smith, a supervisory employee, was brought into a conversation with employees Hayes and Dunham, a narration of which follows:

Q. Directing your attention at or about May 1951, were you ever questioned by any representative of management concerning your union activity?

A. We had numerous discussions on unionism, union activities. The only time that the subject was brought up by anyone other than me was on Thursday . . . the Thursday before May, which would be May 16.

Q. Probably.

A. Mr. John Hayes was delivering out the pays, and he came over to Mr. Smith and I. I was marking some merchandise, and Mr. Hayes said to Mr. Smith, "What do you hear about the Union? I hear they are really going in this place," or words to that effect. I can't quote his exact words. Ernie [Smith] said to Mr. Hayes, "Well, I don't know too much about it."

\* \* \* \* \*

The witness: Right. Mr. Smith said to Mr. Hayes, "What do you hear about the Union?" Mr. Smith said to Mr. Hayes, "I don't know too much about it. Why don't you ask Bill? He is a big shot in the Union."

I merely said to Mr. Hayes, "I don't know anything about the Union." I don't think it was any of Mr. Hayes' business, or anyone else's, for me to tell who was . . .

#### Argument and Conclusions

The Trial Examiner finds that there cannot be any unfair labor practice imputed to Respondent based on any act, speech, or conversation of England, his words and actions were barren of any words of interrogation, or "threat of reprisal or force or promise of benefit."<sup>3</sup>

Likewise, the conversations of supervisory employees Yeager, Smith, and Bossidy were of a similar character and cannot be entertained as substantial evidence justifying the complaint in this case that Respondent has committed unfair labor practices under the Act, with the exception, however, that:

<sup>3</sup> Section 8 (c) of the Act.

(a) Yeager, in a conversation with employee Gaillardet, asked her, "I understand you are in the Union."

(b) Smith, a supervisory employee, asked employee Descz, "Was it a big meeting last night?"

(c) Bossidy, a supervisory employee, in conversation with employee Gaillardet, asked, "Mrs. Bossidy asked me if I signed a card for the Union."

The Trial Examiner finds that the foregoing exceptions place the Respondent in a position of having violated the provisions of the Act. This conclusion is not novel or exceptional, the Board in *Standard-Coosa-Thatcher Company, et al*, 85 NLRB 1358, set forth and reiterated its policy as to interrogation by supervisory employees and has consistently followed its determination in many subsequent cases. The Trial Examiner therefore reaches the conclusion that Respondent committed violations of the Act in the acts and procedures of its supervisory employees. While these acts were not refuted by the Respondent, nevertheless, they were not condoned. Neither the charge nor the complaint particularized in setting forth the specific acts of complaint and there was no evidence produced at the hearing that any knowledge of the supervisory employees' acts was brought to the attention of Respondent prior to the hearing by the complaining union. The action of Respondent's vice president, England, in consulting counsel and undertaking to be guided by his advice, furnishes an inference based on surrounding facts and circumstances that if these instances of unfair labor practices had been called to the attention of Respondent, remedial action would have been taken by it to undo harm, if any, which had been caused to the Union or the employees of Respondent.

The Trial Examiner concludes that the actions of the supervisory employees of Respondent were unfair labor practices under the provisions of Section 8 (a) (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, the Trial Examiner shall recommend that it cease and desist therefrom and that it take certain affirmative action designated to effectuate the policies of the Act.

The Trial Examiner is 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, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. New England Joint Board, Retail, Wholesale and Department Store Union, CIO, is a labor organization 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.

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

[Recommendations omitted from publication in this volume.]

W. SHANHOUSE SONS, INC. *and* UNITED GARMENT WORKERS OF AMERICA, AFL, PETITIONER

W. SHANHOUSE SONS, INC. *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO, PETITIONER. *Cases Nos. 15-RC-627 and 15-RC-649. May 23, 1952*

### Supplemental Decision and Direction

Pursuant to a Decision and Direction of Election,<sup>1</sup> an election by secret ballot was held on April 1, 1952, under the direction and supervision of the Regional Director for the Fifteenth Region among the employees of the Employer in the unit found appropriate. At the close of the election, the parties were furnished a tally of ballots. The tally shows that there were approximately 77 eligible voters and that 72 ballots were cast, of which 36 were for the Amalgamated Clothing Workers of America, CIO, herein called the Amalgamated, none for the United Garment Workers of America, AFL, herein called the Garment Workers, 35 against the participating labor organizations, and 1 ballot was challenged.

As the challenged ballot was sufficient in number to affect the results of the election, the Regional Director investigated the challenge, and on April 16, 1952, issued and duly served upon the parties his report on challenged ballot.

The Regional Director's report reveals that the challenged ballot was cast by employee Patsy Peace, who was employed from September 12, 1951, until March 14, 1952, as a sewing machine operator, a classification falling within the appropriate unit. On March 14, 1952, Peace was transferred to a clerical classification on a 30-day probational basis. It was clearly understood that Peace would decide during this 30-day period whether she wished to remain in the office or return to the job of sewing machine operator; and the office manager of the Employer also reserved decision during this period as to whether Peace was satisfactory as an office employee. At the time of the election, neither Peace nor the Employer had resolved the question of her probational status.

<sup>1</sup> Not reported.