

Appendix

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, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with the UPHOLSTERER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL No. 15, A. F. OF L., as the exclusive representative of all our employees in the unit appropriate for collective bargaining, described below, with respect to labor disputes, grievances, rates of pay, wages, hours of work, disability insurance, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The unit appropriate for a collective bargain is:

All of the production and maintenance employees at our Alhambra, California, plant, exclusive of office clerical employees, the working foremen of the fabrication and assembly department, trimming room, and shipping and receiving department, respectively, and all other supervisors as defined in the Act.

WE WILL NOT take any unilateral action in derogation of the above-named union's right to act as the exclusive representative of our employees in the above-described unit, with respect to any matter properly subject to the collective bargaining process.

WE WILL NOT interfere, in any other manner, with the efforts of the union to bargain collectively with us, in regard to the above-mentioned matters, as the exclusive representative of our employees in the appropriate unit described above.

All of our employees are free to become, remain, or refrain from becoming members of the above-named union, or any other labor organization, except to the extent that their right to refrain may be affected by a lawful agreement which requires membership in a labor organization as a condition of employment.

EDWARD SHANNON, C. W. SHANNON,
AND ARTHUR F. SIMPSON, JR., a
partnership, d/b/a SHANNON &
SIMPSON CASKET COMPANY,

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.

COMMERCIAL PRINTING COMPANY and PINE BLUFF PRINTING PRESSMEN AND ASSISTANTS UNION No. 438, INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA, AFL. *Case No. 32-CA-183. June 3, 1952*

Decision and Order

On December 7, 1951, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that 99 NLRB No. 80.

the Respondent had not engaged in unfair labor practices in violation of Section 8 (a) (1) and Section 8 (a) (5)¹ of the Act, and recommending that the complaint be dismissed in its entirety. Thereafter the General Counsel filed exceptions to the findings in the Intermediate Report and a supporting brief. The Respondent also filed exceptions² to certain portions of the Intermediate Report and a supporting brief.

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

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 briefs and exceptions, and the entire record in this case. Inasmuch as the record does not establish bad faith on the part of the Respondent in discharging its obligation to bargain collectively, the Board hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with respect to the 8 (a) (5) allegation of the complaint. It likewise adopts his findings, conclusions, and recommendations with respect to the 8 (a) (1) allegation.

Order

IT IS HEREBY ORDERED that the complaint, in its entirety, be and it hereby is, dismissed.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed by Pine Bluff Printing Pressmen and Assistants Union No. 438, International Pressmen and Assistants Union of North America, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel and the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued his complaint dated August 31, 1951, against Commercial Printing Company, 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 8 (a) (5) and Section 2 (6) and (7) of the National Labor Relations Act as amended, 61 Stat. 136, herein called the Act. A copy of the charge was duly served upon the Respondent and copies of the complaint and notice of hearing were duly served upon the Respondent and the Union.

With respect to unfair labor practices the complaint alleges in substance that the Respondent: (1) from about December 20, 1950, has refused to bargain

¹ We note a typographical error in the Intermediate Report, Conclusions of Law, finding no 8 (a) (3) rather than no 8 (a) (5) violation.

² In view of its decision herein dismissing the complaint in its entirety, the Board deems it unnecessary to discuss exceptions filed by the Respondent.

collectively with the Union as the exclusive representative of all employees in an appropriate unit; (2) from on or about March 15, 1951, interrogated employees for the purpose of finding out whether or not they were going to go on strike if a strike were called by the Union and promised employees that if they would not go out on the strike called by the Union that they would be taken care of by the Company; and (3) by such conduct interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

The Respondent filed an answer in which it denied having engaged in the alleged unfair labor practice and in which it set up certain affirmative defenses.

Pursuant to notice a hearing was held in Pine Bluff, Arkansas, on September 24, 25, 26, 27, 28, and 29, 1951, before Stephen S. Bean, the undersigned duly designated Trial Examiner. All parties were represented at and participated in the hearing where full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded them. At the conclusion of the hearing a joint motion to conform the pleadings to the proof in minor matters was granted.¹ Decision was reserved on Respondent's motion to dismiss the complaint. This motion is disposed of in accordance with findings and conclusions made and reached in this Intermediate Report. All parties waived oral argument. On November 8, 1951, Respondent filed a brief which has been considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Commercial Printing Company is an Arkansas corporation, having its principal place of business at Pine Bluff, Arkansas, where it is engaged in the operation of a printing plant and the publication of a newspaper called "The Pine Bluff Commercial." Respondent, in the course and conduct of its business in Arkansas, annually purchases raw materials consisting principally of newsprint, ink, metal, comic and feature sections, and other supplies in an amount in excess of \$100,000, approximately 90 percent of which is received by it from outside the State of Arkansas. Respondent annually carries news releases originated by the Associated Press and the United Press and other international news gathering organizations and carries advertising of national organizations engaged in interstate commerce of a value in excess of \$100,000. Respondent annually sells material manufactured at its printing plant in an amount in excess of \$100,000, of which amount in excess of 10 percent is shipped by Re-

¹ During the hearing the following motion made by the General Counsel to amend paragraph 4 of the complaint as follows was allowed without objection: "All web-pressmen and apprentices, all stereotypers and apprentices in the newspaper department, and all cylinder pressmen, platen pressmen, offset pressmen, combination plate makers and camera men, including apprentices, and all photographers in commercial printing (job printing) departments, exclusive of all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act."

Without objections on the part of the General Counsel, Respondent's motions made at the hearing to amend section 7 and the last paragraph of section 8 of its answer to read as follows were allowed: (1) "Respondent denies that on or about December 20, 1950, the Union requested to bargain with it as the exclusive representative of its employees in the unit described in paragraph 4 of the complaint for the purposes of collective bargaining and to meet and bargain with it collectively with respect to rates of pay, wages, hours of employment and other conditions of employment"; (2) "Respondent shows further that in calling said strike the Union, hereinabove described, failed or refused to comply with the provisions of Section 8 (d) (1) and (3) of the Act."

spondent to and through States of the United States other than the State of Arkansas.

Respondent concedes that it is engaged in commerce within the meaning of the Act and I so find.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Synopsis of events

Collective bargaining agreements between Respondent and the Union were first executed in 1940. The latest agreement, prior to that with which this case is concerned, covered a period from March 25, 1950, through March 24, 1951.

Negotiations seeking to procure a new and revised contract effective March 25, 1951, providing greater benefits were initiated by the Union on December 22, 1950. Sixteen bargaining sessions were held between that date and September 3, 1951. No agreement was reached. A strike took place on March 29, 1951.

By March 26, 1951, the Union's proposals were as follows: (1) Reduction from a 40-hour to a 37½-hour week and from an 8-hour to a 7½-hour day; (2) employment of additional operators to man a new press acquired by Respondent since March 1950; (3) a 10 percent raise; (4) an increase from regular time to time and one-half for the printing of dodgers; (5) a reduction from an 8-hour to a 5-hour workday on the Saturday night shift; and (6) the continued inclusion of a union-security provision in the new contract sought to be negotiated.²

During the course of negotiations Respondent objected to the continuance of the inclusion of the union-security clause on the basis that it provided for a closed shop in violation of both the Taft-Hartley Law and Act 101 of the Acts

² Commencing at least as early as 1948 the following clauses had appeared in all annual contracts: (1) "All work performed in these departments mentioned above in this contract shall be done by members of Local Pine Bluff Printing Pressmen and Assistants Union of North America"; (2) "Anyone making application for employment in any department mentioned in this contract must apply through the Secretary of the Local Union, said secretary to make the necessary contact with the proper authorities for action on his application. By proper authorization is meant the foreman or management"; (3) "Union agrees to use every effort to supply employers with competent Union pressmen and assistants on demand. In case of its inability to do so, said employer shall have the right to employ other pressmen and feeders and all other employees covered under this contract. If the party of the first part under this clause employs a pressman or assistant not a member of the Union, who is competent, capable and reliable (The Executive Board of No. 438 and the Employer are to be judges of his or her competency), the Union agrees to furnish said men or women a card and allow either to remain in the employ of said party of the first part, provided no law of either the International or Local Unions has been violated"; and (4) "It is not the intention or purpose of either of the parties hereto to make any provision in this agreement which is in contravention of any State or Federal Law, and, if it shall be found that any agreement contained herein violates any law, such agreement shall be null and void."

These four quoted clauses in substance continued to remain in the contracts which were renewed in 1949 and in 1950. Slight variations appear, in the 1950 contract, to wit; respecting the Union's agreement to use effort to supply union pressmen and assistants the latter contract added "If the new employee is not a member of the Union said employee when judged competent shall have sixty (60) days in which to make application for the Union"; and the "savings clause" was changed to read "In the event any section or portion of this contract be held invalid or in conflict with any State or Federal Law by any court of competent jurisdiction, such section or portion shall thereupon be inoperative and of no further force and effect, but such decision shall not affect the remaining sections or portions hereof and the same shall continue in full force and effect."

of the General Assembly of the State of Arkansas of 1947 and Amendment No. 34 to the Constitution of the State of Arkansas, attached to this Report and marked Appendix A.

The March 26, 1951, proposals were reiterated in a letter from the Union dated April 2, 1951.

In addition to making these six proposals, the Union had on February 23, 1951, informed Respondent that International Stereotypers and Electrotypers Union, herein called the Stereotypers, would claim jurisdiction for the stereotyper who had been included in the contracts concluded by Respondent and the Union annually since 1940 with the exception of the years 1944 or 1945 and 1948.

On May 16, 1951, Respondent made the concessions of agreeing to reduce from an 8-hour to a 6-hour workday the Saturday night shift, to increase paid vacation allowances, and renewed its previous offer to increase the number of combination web-pressmen and stereotypers from six to seven. On this date the Company also proposed the incorporation in a contract of certain new provisions³ in substitution for the union-security clauses appearing in earlier contracts.

By May 17 and May 18, 1951, the Union and the Stereotypers made the concessions of agreeing to temper their original demand that the number of combination web-pressmen and stereotypers to be employed should total 17 as required by their respective bylaws and their subsequent modified demand that the total should be 11, by proposing to accept a manning of 8 combination web-pressmen and stereotypers. They accepted Respondent's proposals reducing the number of hours constituting the workday on the Saturday night shift from 8 to 6 hours and offered to accept a 38-hour workweek.

The Union and the Stereotypers also expressed a willingness, in view of the Company's concession concerning vacations, to compromise to some extent respecting their original demands for a 10-percent wage increase and to make some compromise regarding their proposal that time and one-half should be paid for printing dodgers.

They further asserted that they were willing to assist the Company in drafting a clause along the lines appearing in other printing crafts' agreements in the State of Arkansas, in substitution for the union-security clauses appearing in former contracts between the Union and Respondent.⁴

³ These proposals were as follows :

The Company and the Union agree that there shall be no discrimination against any employee in the bargaining unit described above because of his membership or nonmembership in any labor organization.

The right to hire, promote, discharge or discipline for cause, and to maintain discipline and the efficiency of the employee, to adopt and enforce working rules, are solely responsibilities of the Company, except that it agrees that no employee shall be discriminated against because of his union membership, and that such right is subject to the terms of this agreement. The products to be manufactured, the schedule of production, the hours to be worked each week, the assignment of work, the methods, processes and means of management and production are solely and exclusively functions and responsibilities of the Company. These functions are illustrative, and are not exclusive.

The Union recognizes the Company's right to employ a foreman or mechanical superintendent who has the authority in the interest of the employer to hire, discharge, suspend, lay off, recall, promote, assign rewards or discipline other employees or have the responsibility to direct them.

⁴ By stipulation entered into between the General Counsel and the Union, there was offered and received in evidence a copy of a contract between the Union and the Arkansas Democrat of Little Rock, Arkansas, section 2 of which is as follows :

The party of the first part agrees to employ pressmen and pressmen apprentices under the conditions and at the scale of wages stipulated herein. The Union agrees to furnish the number of pressmen and apprentices which the Publisher may call upon the Union to supply, and the Publisher agrees to hire all qualified pressmen.

On May 17, 1951, the Union was unwilling to accept that part of the particular provision submitted by Respondent by way of replacing the union-security clauses (see footnote 3) reading as follows:

The products to be manufactured, the schedule of production, the hours to be worked each week, the assignment of work, the methods, processes and means of management and production, are solely and exclusively functions and responsibilities of the Company. These functions are illustrative, and are not exclusive.

Three and one-half months later, on September 3, 1951, the Union informed Respondent that it would accept a provision providing that the functions referred to as illustrative and not exclusive in the above-quoted clause, should be subject to arbitration or a grievance committee rather than the prerogative of management. The Union also accepted the proposal by Respondent that it should recognize Respondent's right to employ supervisors having authority to hire, discharge, and otherwise deal with control and direct employees.⁵

The parties were never able completely to agree and on September 3, 1951, Respondent notified the Union and the Stereotypers it was raising a question of representation and the meeting was adjourned.

and apprentices furnished in response to such calls so far as the Publisher may lawfully hire such pressmen and apprentices under State and Federal Laws in force at the times such prospective employees are made available for employment by the Publisher. It is agreed that all men furnished by the Union to the employer to cover regular situations shall be eligible to work at straight time rates. Nothing in this agreement shall obligate the office to hire men when there is no work to be performed nor shall any payment be made for any day or days on which no paper is published. The sole right of the Publisher to determine the specific days on which publication shall be maintained shall not be open to question and the Publisher shall be the judge of the number of men required. This contract and scale of wages applies only to newspaper web-pressmen and their regular apprentices.

By similar stipulation there was also offered and received in evidence a copy of a contract between the Union and Southwestern Publishing Company, a newspaper of Fort Smith, Arkansas, sections II and IX of which are as follows:

The Union agrees to furnish competent workmen at regular straight time rates, and its members agree to comply with the conditions enumerated herein during the life of this agreement. The Publisher agrees to employ members of the Union to cover all positions which this contract contemplates, including that of Foremen. If upon twelve (12) hours notice, the Union fails to supply the number of competent men called for by the Publisher, at regular straight time rates, other competent men may be employed by the Publisher temporarily until the Union is able to furnish the number of competent men required, at regular straight time rates.

The Publisher reserves the right to select the Foreman and name Man-in-Charge. (1) When more than one press is in operation, the Foreman shall be considered a part of the crews.

(2) The Foreman of the Press Room shall be a practical Webb Pressman and a member of the Fort Smith Printing Pressmen and Assistant's Union number 145. He shall be the judge of competency and shall hire, discharge, supervise and govern all employees, give out all the situations, and assign all men to their positions in the Press Room of which he is Foreman, in accordance with the terms of this agreement. In event of a disagreement in regard to the Foreman's orders, which cannot be adjusted amicably by the Publisher and employee or employees concerned, said disagreement shall be submitted to a Standing Committee provided elsewhere in this agreement. Pending a decision of the disagreement, the Foreman's orders shall be followed as given. The Union shall not discipline the Foreman for carrying out the instructions of the Publisher or his representative as authorized by this contract and scale. Employees may protest against the Foreman's action but if the Foreman, after careful consideration decides his actions warranted by this contract, he need not change conditions unless directed to do so by the Publisher or by decision of the Joint Standing Committee.

⁵ Although the Union's representative in his testimony mentioned the *first* article in Respondent's proposed contract, I find from its context the testimony was intended to refer to the *last* paragraph of proposal of May 16, 1951.

About a week before March 29, 1951, Armistead Freeman, Respondent's vice president, was stopped during his rounds of the plant by Thurman Faulkner, an apprentice offset pressman and shown a broken press part. Faulkner stated in substance that it would be unfortunate should the press break down at a time when labor relations were strained and the conversation turned to the question of how negotiations toward arriving at a collective bargaining contract between the Union and Respondent were progressing. When Freeman stated that the parties were still meeting and trying to agree, Faulkner indicated that Freeman should realize there might be a strike if no agreement eventuated. Freeman expressed the hope that there would be no strike and asked Faulkner what his position would be if the employees should strike. Faulkner told Freeman that he would have no choice other than to go out with the other employees. Freeman replied that there would be no hard feelings if Faulkner should strike with the other men but he wanted him to know that he would be taken care of if he should remain and work. About March 26, 1951, Raymond Hale, the sole combination cameraman and platemaker employed by Respondent, asked Freeman if he could take his 1950 vacation then. Freeman told Hale he and Respondent's assistant secretary and manager were exceedingly busy with union negotiations, that he did not know how much work there was to be performed and could not let him take off at that time. Previously about March 20, 1951, Hale had asked Freeman how negotiations were coming along. Freeman stated the parties were meeting and trying to agree on the terms of a contract. The question arose as to what would happen if a strike occurred. Freeman asked Hale what he was going to do if they did have a strike. Hale stated he would have to go out with the others. Freeman then asked Hale if he could not join the photoengravers union and thereby become disassociated from the Union in case a strike should take place. Hale replied that it was too late and he could not do so because he was not a photoengraver.

B. Conclusions

The Alleged 8 (a) (5) Violations

The Union desired to amend the 1950-51 agreement in the first five of the six respects already mentioned. The Respondent desired to eliminate from a new agreement any clause providing for a union or a closed shop. All of these matters were fully discussed during the course of the 16 bargaining sessions, both before and after, and the Union called the strike on March 29, 1951.

In my opinion, Respondent's refusal to accept the Union's proposed revisions after full and open discussion does not demonstrate a disregard of its statutory obligation. The Act does not compel either party to agree to the other proposals. It only requires the parties to confer in good faith. The Respondent repeatedly pointed out that the reductions in working hours, the increases in pay, and the adding of additional employees sought by the Union would involve an expense it would be unable to bear. The evidence demonstrated that acquiescence in the Union's proposals would have cost Respondent \$6,600 for the first 3 months of 1951 and that for the same period the profits, without considering any increased expenses, amounted to only \$2,000. I find that Respondent made a genuine and sincere effort to persuade the Union to accept its position. Of course the validity of its position that it could not meet the additional expense involved in an acceptance of the Union's proposals depended upon the existence of facts peculiarly within the Respondent's knowledge. Respondents sought to make those facts known to the Union by offering to let the Union examine its books and to pay half of the expense involved in having

an impartial accountant determine its financial status. The Union rejected this offer, stating it did not see where the question whether or not the Company was making money should enter into the problem. In addition to offering to renew the 1950-51 contract without the inclusion of what it considered a closed-shop provision, Respondent made such concessions as agreeing to employ an additional combination web-pressman and stereotyper, to pay time and one-half after 6 hours work on the Saturday night shift, and to grant more liberal vacation benefits. The Union and the Sterotypers, working in concert, in turn made such concessions as agreeing to modify their original proposal of 17 as a suitable number combination web-pressmen and stereotypers to be employed, to 8, 1 more than Respondent considered necessary and was willing to employ, to accept Respondent's counterproposal reducing the number of hours to be employed at straight pay on the Saturday night shift and to reduce demands for a 37½-hour week by one-half hour. In some manner Respondent came to believe that the Union had withdrawn its proposal that time and one-half should be paid for printing dodgers. However, the Union denied having made such recession, at the same time, nevertheless, expressing its readiness to make some compromise concerning the proposal as well as its original request for 10 percent pay increase.

At no time however, was either the Union or were the Stereotypers agreeable to signing a 1950-51 contract that did not contain some sort of a union or closed-shop provision. They maintained the position that the Union had worked for years to get such a provision incorporated in contracts, that they had no intention of agreeing to eliminate it, and that the clause contained in previous contracts reading: "It is not the intention or purpose of either of the parties here to make any provision in this agreement which is in contravention of any State or Federal Law, and, if it shall be found that any agreement contained herein violates any law, such an agreement be null and void," cured any illegality that might inhere in the provision's inclusion.⁶ The Union's offer or suggestion that it would assist the Company in drafting a union-security clause along the lines of those contained in other Arkansas printing crafts' collective bargaining agreements did not amount, at most, to a surrender of its proposal that a union- or closed-shop proposal of some character be included in the new agreement. A reading of the quoted sample sections of the two other agreements executed by the Union in Arkansas (see footnote 4) makes clear the fact that no phraseology acceptable to the Union would provide that Respondent should have the right to employ and continue in its employment anyone it chose regardless of his membership or nonmembership in the Union.

Respondent contends that the Union engaged in a strike in order to attempt to compel Respondent to execute an unlawful union-security agreement, that as a consequence the strike was unlawful and in violation of Section 8 (a) (3) of that Act, that as a result of such conduct the Union forfeited any rights it had to represent Respondent's employees, and that accordingly, Respondent was not obliged to bargain with the Union after March 29, 1951.

⁶ The fact that the Union would be willing to disregard an employment provision repugnant to the specific language or basic policy of the Act and the Arkansas Constitutional Amendment and Enabling Act, when and if it should be declared illegal, furnished no justification for asserting it should continue to remain in a new contract.

If Respondent had agreed to the inclusion of an illegal condition it would not be likely to bring to light its own violation of the Act, and an affected employee should not be required to file a charge nor the General Counsel obliged to prosecute a complaint, for the purpose of testing the issue, before the Board having itself but disputable jurisdiction to determine the question as to what is or is not unlawful union security in the State of Arkansas.

The burden of establishing by a fair preponderance of substantial evidence that the strike was designed, at least in substantial part, to achieve, in the form of an illegal employment provision an unlawful goal, falls upon Respondent. In my opinion, it has not sustained this burden. In the face of the testimony of John A. Aeschliman, Sr., the union representative, that the strike was precipitated because of the Union's belief that the Company was not bargaining with him or attempting to bargain with him in good faith and because of what the Union considered the Company's inconsistency in hiring an additional worker and at the same time contending it did not need an additional employee, and in the absence of convincing testimony that the strike was called in an attempt to compel Respondent to accept an illegal union-security provision, I feel that Respondent has done no more than raise a suspicion that this synergy was directed at attaining an unlawful end.

But suspicion is not proof. Therefore, in arriving at the ultimate conclusion that Respondent has not refused to bargain with the Union in violation of Section 8 (a) (5) of the Act, I am guided by considerations other than by this particular contention. Furthermore, Respondent did not discontinue bargaining negotiations after the strike but met with the Union on at least seven occasions and made certain concessions already adverted to, after March 29. Respondent seemingly, not only recognized that there was a chance that what seemed a steely rigidity of bargaining positions on all matters, except those pertaining to the existing employment provision, before strike action, afterward might very well become transmogrified by time and circumstance to a more ductile alloy of compromise, but also realized that if in the presence of a strike it could have avoided the obligation to bargain by declaring further efforts to be useless, the Act would largely fail of its purposes.

Neither is it deemed necessary since I have arrived at the conclusion that Respondent has not violated Section 8 (a) (5) of the Act, to consider whether the bargaining unit claimed by the General Counsel is appropriate or whether the pressroom employees and the job shop employees must be regarded as separate units. It is sufficient to point out that under all the circumstances of this case, the record as a whole does not indicate that any intransigence on a particular issue reflected Respondent's intention to avoid coming to an agreement. Although it does appear that Respondent refused to accede to all the Union's demands which would have involved increasing the expense of conducting its business, it went to considerable pains, even to the extent of offering the Union an opportunity to audit its books (an offer rejected by the Union), in an attempt to satisfy the Union that its reasons for its refusal were adequate. It was willing at all times to discuss, and did discuss with the Union and the Stereotypers, these and other union proposals, including even the Union's desire to continue the existing or a substantially similar employment provision and urged upon the Union a clause that would meet the requirements of the Act. Respondent not only offered to renew the old contract without the disputed employment provision, but also agreed to various liberalizing concessions on other issues. Under these circumstances, and in view of its previous satisfactory relations with the Union over a period of 10 years, I am not persuaded that Respondent's intransigence on certain issues involving costs it strove to convince the Union it could not bear, indicated an intention to avoid coming to any agreement and feel that Respondent's position on the issues wherein it did not agree with the Union, did not constitute a refusal to bargain in good faith. I find no evidence that Respondent approached the bargaining table other than with a sincere desire to reach a lawful agreement. Accordingly, I shall recommend dismissal of the allegations of the complaint that Respondent re-

fused to bargain with the Union in violation of Section 8 (a) (1) and (5) of the Act.

The Alleged 8 (a) (1) Violations

At the time the strike took place, the Union was the representative of Respondent's employees. Of course, Respondent was obligated to deal with it, and not with the employees individually. The record shows that before the strike, Respondent's vice president, Armistead Freeman, asked employee Faulkner what his position would be if the employees should strike and told Faulkner there would be no hard feelings if he should go out with the other men, but he wanted him to know that he would be taken care of if he would remain at work,⁷ and asked employee Hale what he was going to do if the men struck and if he could not join the Photo Engravers Union so that he could remain at work in the event of a strike. It is apparently the contention of the General Counsel (although the point was neither argued or briefed) that such conduct on the part of an employer necessarily has the effect of undermining the authority of the bargaining representatives of his employees, and thereby unlawfully interferes with the right of the employees to bargain collectively, in violation of Section 8 (a) (1) of the Act. These inquiries and remarks must be considered in their context. Freeman is a young contemporary of both Faulkner and Hale and on especially friendly terms with the former. Under the particular circumstances and on the basis of the opportunity I had of observing both Faulkner and Freeman, I consider the words "taken care of," or their substantial equivalent, were calculated to give Faulkner no other impression than that if he chose to stay he could count on remaining at work under the conditions and prospects that had prevailed in the past. During the course of the bargaining discussions, Freeman, while making his daily rounds throughout the plant and his close contacts with its relatively few employees, was frequently queried by them concerning the progress of negotiations. It is not entirely clear whether these numerous discussions were initiated or encouraged by Freeman or by the employees themselves. It was not proven by the General Counsel that in the instances of Faulkner and Hale the references to the possibility of a strike were first made by them or by Freeman. Rather it would appear with respect to Faulkner, that that subject grew out of a conversation commenced by Faulkner relating to a broken press part and Faulkner's indication that Freeman should realize there might be a strike if Respondent and the Union could not agree on a contract. With respect to Hale, it would seem that the subject arose during a conversation started by Hale's inquiry of Freeman concerning the progress of negotiations. When Hale asked Faulkner, a few days later, about taking his vacation, nothing was said about the imminence of a strike or what Hale might do if one were called. Certainly there was no evidence either that Freeman made any promise to Hale or that he took advantage of Hale's request for a vacation, at the critical hour it was made, to ingratiate himself with Hale by granting the request in the hope that Hale would either seek to withdraw from the Union and join another or refrain from joining others in a strike.

In view of all the circumstances in this case, including the absence of the commission of any other unfair labor practices, I do not believe that the evidence pertaining to only two isolated incidents in which any representative of management discussed the impending strike with its employees, sufficiently estab-

⁷ Freeman denied making this employee any offers to "stay on" or asking him to "stay on," but on the record as a whole, I find this denial unconvincing evidence that he did not at least paraphrastically inform Faulkner he would be taken care of if he should remain at work.

lishes the fact of an attempt to undermine the Union's authority to warrant the issuance of a remedial order.

Therefore, on the record as a whole I shall also recommend dismissal of the allegations of the complaint that Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

CONCLUSIONS OF LAW

(1) The operations of Respondent, Commercial Printing Company, Pine Bluff, Arkansas, constitute and affect trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) and (7) of the Act.

(2) Pine Bluff Printing Pressmen and Assistants Union No. 438, International Printing Pressmen and Assistants Union of North America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

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

[Recommendations omitted from publication in this volume.]

Appendix A

ACT 101 OF THE ACTS OF THE GENERAL ASSEMBLY
OF THE STATE OF ARKANSAS OF 1947

Act 101

AN ACT for the Enforcement of the Provisions of Amendment No. 34 to the Constitution, and for Other Purposes

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. Freedom of organized labor to bargain collectively, and freedom of unorganized labor to bargain individually is declared to be the public policy of the State under Amendment No. 34 to the Constitution.

SEC. 2. No person shall be denied employment because of membership in, or affiliation with, a labor union; nor shall any person be denied employment because of failure or refusal to join or affiliate with a labor union; nor shall any person, unless he shall voluntarily consent in writing to do so, be compelled to pay dues, or any other monetary consideration to any labor organization as a prerequisite to or condition of, or continuance of, employment.

SEC. 3. No person, group of persons, firm, or corporation, association, or labor organization shall enter into any contract to exclude from employment, (1) persons who are members of, or affiliated with, a labor union; (2) persons who are not members of, or who fail or refuse to join, or affiliate with, a labor union; and (3) persons who, having joined a labor union, have resigned their membership therein or have been discharged, expelled or excluded therefrom.

SEC. 4. Any person, group of persons, firm, corporation, association, labor organization, or the representative, or representatives thereof, either for himself or themselves, or others, who signs, approves, or enters into a contract contrary to the provisions of this Act shall be guilty of a misdemeanor; and, upon conviction thereof shall be fined in a sum not less than \$100.00 nor more than \$5,000.00, and each day such unlawful contract is given effect, or in any manner complied with, shall be deemed a separate offense and shall be punishable as such as herein provided.

The power and duty to enforce this Act is hereby conferred upon, and vested in, the Circuit Court of the county in which any person, group of persons, firm, corporation, unincorporated association, labor organization, or representatives

thereof, who violate this Act, or any part thereof, resides or has a place of business, or may be found and served with process.

SEC. 5. This Act shall not apply to existing contracts, but shall apply to any renewals or extensions thereof.

SEC. 6. The provisions of this Act are severable, and the invalidity of one shall not affect the validity of the others.

SEC. 7. Labor controversies, the disruption of industrial and agricultural labor by labor disputes, the effort to force laborers to join, or to refrain from joining, labor organizations, are a menace to the peace, quietude, safety and prosperity of the people of the State; an emergency is therefore declared, and this Act shall take effect from and after its passage.

Approved: February 19, 1947.

AMENDMENT NO. 34 TO CONSTITUTION OF STATE OF ARKANSAS

NO. 34. RIGHTS OF LABOR

SECTION 1. Discrimination for or against union labor prohibited.—No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.

SEC. 2. Enforcement of amendment.—Legislation authorized. The General Assembly shall have power to enforce this article by appropriate legislation.

OCEAN TOW, INC., PETITIONER *and* SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA *and* PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION. *Case No. 19-RM-77.*
June 3, 1952

Supplemental Decision and Direction

On February 13, 1952, the Board issued a Decision and Direction of Elections¹ in the above-entitled case, directing separate elections to be conducted on each of the Employer's two ships, with the ultimate unit finding, whether a single unit or two, to depend on the results of these elections.

On March 7, 1952, one of the competing unions, Seafarers International Union of North America, herein called the SIU, filed a "Petition for Reconsideration by Full Board," contending that only a single unit composed of employees on *both* vessels of the Employer is appropriate. The Employer filed a memorandum in support of the motion, and the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, the other competing union, a telegram in opposition. On

¹ 98 NLRB 77.

² 99 NLRB No. 84.