

We shall direct the Regional Director to conduct a new election at such time as he deems appropriate.

Order

IT IS HEREBY ORDERED that the election of February 1, 1952, be, and it hereby is, set aside; and

IT IS FURTHER ORDERED that these proceedings be remanded to the Regional Director for the region in which these cases were heard for the purpose of conducting a new election at such time as he deems the circumstances permit a free choice of a bargaining representative for each voting unit.

MOYER & PRATT, INC. *and* INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, AFL. *Case No. 3-CA-516. February 26, 1953*

Decision and Order

On December 22, 1952, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.¹

The Board² has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

We find that the activities of Respondent set forth in the Intermediate Report, occurring in connection with its operations described in the Intermediate Report, 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.

¹ The request of the Respondent for oral argument is hereby denied as the record, including the exceptions and briefs, adequately presents the issues and positions of the parties.

² Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Moyer & Pratt, Inc., Lyonsdale and Lyons Falls, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize or bargain collectively with the International Brotherhood of Paper Makers, AFL, as the exclusive representative of all production and maintenance employees employed by Respondent at its mill and warehouses in Lyonsdale and Lyons Falls, New York, but excluding all office employees, foremen, tour bosses, and all guards, professional employees, and supervisory employees as defined in the Act.

(b) Engaging in any like or related acts or conduct interfering with the efforts of International Brotherhood of Paper Makers, AFL, to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

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

(a) Upon request, bargain collectively with International Brotherhood of Paper Makers, AFL, as the exclusive bargaining representative of all the employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and embody in a signed agreement any understanding reached.

(b) Post at its mill and warehouses in Lyonsdale and Lyons Falls, New York, copies of the notice attached to the Intermediate Report and marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

³ This notice shall be amended by substituting for the words "The recommendations of a Trial Examiner" in the caption thereof, the words "A Decision and Order."

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."

Intermediate Report

After certification of the International Brotherhood of Paper Makers, AFL, herein called the Union, as the exclusive bargaining agent of all production and maintenance employees at Respondent's (Moyer & Pratt, Inc., is referred to herein as Respondent) mill and warehouses in Lyonsdale and Lyons Falls, New York, Respondent refused to bargain collectively with the Union. The sole question involved herein is the validity of the certification.¹

Pursuant to a stipulation for certification upon consent election, the National Labor Relations Board, herein called the Board, conducted an election by secret ballot on April 3, 1952, to determine whether a majority of the production and maintenance employees at Respondent's mill and warehouses in Lyonsdale and Lyons Falls, New York, wished to have the Union certified by the Board as their representative for the purposes of collective bargaining. At that election 65 employees were eligible to vote and 63 employees voted. Thirty-five employees voted for the Union, 23 voted against the Union, and 5 ballots were challenged.

On April 9, 1952, Respondent filed timely objections to the election, alleging in substance that the Board agent refused to establish electioneering limits and that a union official, who was not an employee and who conducted the union organizing campaign prior to the election, electioneered near the polling place during voting hours, thus coercing and intimidating employees on their way to vote and interfering with their free choice.²

On May 21, 1952, the Board's Regional Director issued his report on objections. The Regional Director found that the objections raised no material issues with respect to conduct affecting the results of the election and recommended that they be overruled and that the Union be certified as the bargaining representative.

On May 27, 1952, Respondent filed exceptions to the Regional Director's report on objections, which, in effect, reiterated the contentions raised in its objections to the election. Respondent requested "that the Board direct a hearing on the Employer's Objections to be conducted before a hearing officer, that it be permitted oral argument, and memorandum in support thereof, and that the election held on April 3, 1952 be declared null and void and be set aside."

¹ Respondent engages in Lyonsdale and Lyons Falls, New York, in the manufacture, sale, and distribution of paper and paper products and annually ships in interstate commerce materials valued in excess of \$50,000.

² Respondent's objections state that a few moments before the polls opened a company representative observed the union official "in his car near the polling booth, adjoining the direct path of employees going to vote and where they would necessarily have to pass and face him"; that despite complaints as to this conduct the Board's representative refused to designate poll or electioneering limits; that just as the voting began the union official moved his car even nearer the direct path of employees going to vote and where they would necessarily have to pass him; and that he talked to employees just prior to casting their ballots; that a company representative immediately protested this conduct and asked the Board agent to direct the union official to move away from the direct path to the polling booth; that the Board agent refused; that the Board agent stated that company and union officials should govern themselves in such a manner as to prevent either party from having grounds for an objection to the election, that she was not able to patrol the area; that after the statements by the Board agent the union official returned to his former position—sitting in his car adjoining the direct path of employees going to vote; that the union official continued to salute, wave to, and speak to employees going to and returning from the polling booth until approximately 3 shifts of the plant, representing better than three-fourths of the personnel in the plant, had either voted or had had an opportunity to vote; that the union official then drove his car to a point on a hill overlooking the path to the polling booth and approximately 100 yards distant therefrom and there got out of his car, stood in front of it, vigorously waved and saluted to each group of employees as they passed to the voting booth until the polls closed, except for 1 period while the polls were still open, when he stopped 3 cars of employees leaving the plant and talked to them.

On or about June 12, 1952, Respondent filed affidavits in support of its exceptions.

On or about September 16, 1952, the Board issued its decision and certification of representatives.³ Therein the Board stated *inter alia*:

Upon the entire record in the case,⁴ the Board finds:

* * * * *

4. The Employer's objections do not raise material or substantial issues with respect to the election for the following reasons:

It appears that the election was conducted on the Employer's premises, in a garage adjacent to the plant; that in going to the poll a number of employees used an outside path leading from the plant to the garage; that the path followed the general contour of a paved road leading to the plant; that during the first half hour of the election a union official was stationed in his car at a point on said paved road, which was about 10 feet from the path and about 125 feet from the polling place. The Employer alleges and we shall assume *arguendo* that while at the above-mentioned point, the union representative spoke to employees who were on their way to vote. Because of this alleged conduct, the Employer immediately complained to the Board agent conducting the election, who then told both parties not to engage in conduct which would give rise to the filing of objections. Thereafter, the union official returned to the location described above and resumed his activity until a half hour later when he drove his car to another location on a hill 100 yards from and overlooking the polling place, from which he waved to employees.

The Employer's basic objection is that the union official electioneered on a road within the "polling area"¹ and thereby coerced the employees and interfered with the holding of a "free and fair" election. Upon the entire record, and especially the following circumstances, we find no merit to this objection: (1) No claim is made that the union official made any coercive statements or wilfully violated any instructions of the Board agent; (2) the union official was stationed in his car on a highway 125 feet from the polling place;² and (3) his proximity to the private path used by the employees did not involve inescapable personal contact with them.³

We accordingly find that conduct of the union official did not interfere with the election or impair the free choice of the employees therein. The Employer's exceptions to the report on objections are hereby overruled.

¹ While it may be true that the Board agent failed, at the Employer's request, to establish specifically electioneering limits, we think it clear that he regarded the union official's station—125 feet from the polls—to be outside the prohibited area. Otherwise, when he was apprised of the location of the union official and spoke to both parties with respect to general standards of conduct, he would have instructed the union official to leave the point in question.

² We note that this distance is comparable to that required under New York State law.

³ In these circumstances, we are satisfied that our holding in *J. I. Case Company* (85 NLRB 576) is here controlling, rather than our holding in *Detroit Creamery Co.* (60 NLRB 179) which is distinguishable on its facts.

The Board certified that the Union "has been designated and selected by a majority of the employees" as their representative for the purposes of collective bargaining.

On or about September 23, 1952, the Union requested Respondent to bargain collectively in respect to rates of pay, wages, hours of employment, or other conditions of employment of the employees involved.

³ Reported in 100 NLRB 1147.

⁴ Respondent was not granted the hearing or oral argument it had requested.

On or about October 1, 1952, and at all times thereafter, Respondent refused and continues to refuse to bargain collectively with the Union.

On October 31, 1952, the complaint herein was issued.

At the hearing before the undersigned, conducted in Rome, New York, on November 24, 1952, Respondent contended that the Union's interference with the voters vitiated the election and certification based thereon and offered to prove the facts set forth in its affidavits in support of its exceptions to the Regional Director's report on objections. Respondent did not offer any additional or newly discovered evidence. Respondent argued, as it does in its brief, that the grounds enumerated by the Board (especially the one numbered "3") for overruling its objections are not proper grounds for such action but did not offer evidence indicating the facts were contrary to those found by the Board. For example, Respondent argued that under the circumstances prevailing the fact that some employees (10 or 12) did actually stop and converse with the union official constituted electioneering "at or near the polling place" and hence constituted grounds for vitiating the election result and the certification based thereon and that it was not necessary to show that the union official's proximity to the path used by the employees involved "inescapable personal contact." Respondent did not offer evidence to show that the union official's proximity did in fact involve inescapable contact with the employees. The undersigned rejected Respondent's proffers of evidence.

It appeared, and appears, to the undersigned that the effect of the Board's rulings in the representation proceeding, including the Board's refusal to afford Respondent a hearing on its objections, is that assuming the facts stated in Respondent's affidavits, nevertheless, Respondent's objections do not raise material or substantial issues with respect to the election. The undersigned deems himself bound by the Board's rulings in the representation proceeding, is not persuaded that the evidence offered by Respondent should be admitted in this proceeding, and adheres to the rulings made at the hearing.

Conclusions

In view of the foregoing and upon the entire record in this matter, the undersigned makes the following findings of fact and conclusions of law.

1. Respondent is engaged in commerce within the meaning of the National Labor Relations Act, as amended, herein referred to as the Act.
2. International Brotherhood of Paper Makers, AFL, is a labor organization within the meaning of the Act.
3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees employed by Respondent at its mill and warehouses in Lyonsdale and Lyons Falls, New York, but excluding all office employees, foremen, tour bosses, and all guards, professional employees, and supervisory employees as defined in the Act.

4. At all times since on or about September 16, 1952, the Union has been the exclusive representative of all employees in the aforementioned unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

5. On or about October 1, 1952, and at all times thereafter, Respondent refused and has continued to refuse to bargain collectively with the Union as the representative of the employees in the unit heretofore found appropriate.

6. That by the aforesaid refusal to bargain Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

THE REMEDY

Since it has been found that Respondent has engaged in unfair labor practices, in order to effectuate the policies of the Act it is recommended that Respondent take the action hereinafter specified.

[Recommendations omitted from publication in this volume.]

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 WILL NOT engage in any acts in any manner interfering with the efforts of INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, AFL, to negotiate for or represent the employees in the bargaining unit described below.

WE WILL bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment, and other conditions of employment and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed at the mill and warehouses in Lyonsdale and Lyons Falls, New York, but excluding all office employees, foremen, tour bosses, and all guards, professional employees, and supervisory employees as defined in the Act.

MOYER & PRATT, INC.,
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.

WAYSIDE PRESS, INCORPORATED *and* PRESSMEN'S UNION, No. 78 *and*
WAYSIDE PRESS EMPLOYEES' INDEPENDENT UNION, INC. *Case No.*
21-CA-1281. February 26, 1953

Decision and Order

On November 14, 1952, Trial Examiner James R. Hemingway 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. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.¹

¹ We hereby deny the Respondent's request for oral argument as the record and brief adequately present the positions of the parties.