

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.

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 the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.³

Order

Upon the entire record in the 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, Wayside Press, Incorporated, Los Angeles, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Wayside Press Employees' Independent Union, Inc., or with the formation or administration of any other labor organization of its employees or from contributing any support thereto.

(b) Recognizing Wayside Press Employees' Independent Union, Inc., or any successor thereto as the representative of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization, or 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 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, as guaranteed in Section 7 thereof.

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

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 [Members Houston, Murdock, and Styles].

³ We agree with the Trial Examiner's findings that the Respondent's foremen are supervisors as defined in the Act. In addition to the facts set forth in the Intermediate Report in support of this finding, we note that under the Respondent's theory urging only 1 supervisor in the plant—the general manager and plant superintendent—the ratio of supervisors to rank-and-file employees would be 1 to 50.

In connection with the statement in the Intermediate Report that Foreman Stevens addressed the employees concerning the desirability of reactivating the Independent, we find that this speech occurred at the meeting of September 10, 1951, after the ballots had been cast.

(a) Withdraw all recognition from, and completely disestablish Wayside Press Employees' Independent Union, Inc., or any successor thereof as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

(b) Post at its plant in Los Angeles, California, copies of the notice attached hereto marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after having been duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twenty-first Region (Los Angeles, California), in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

⁴ 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."

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 HEREBY DISESTABLISH WAYSIDE PRESS EMPLOYEES' INDEPENDENT UNION, INC., as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and will not recognize it or any successor thereto for any of the above purposes.

WE WILL NOT dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any 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 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, as guaranteed by Section 7 thereof.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any labor organization.

WAYSIDE PRESS, INCORPORATED,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed on November 28, 1951, by Pressmen's Union, No. 78, herein called the Union, the General Counsel for the National Labor Relations Board (herein called General Counsel and Board, respectively), by the Regional Director for the Twenty-first Region, issued a complaint dated May 22, 1952, against Wayside Press, Incorporated, herein called the Respondent, alleging that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, charge, and notice of hearing were served upon the respective parties hereto.

With respect to the unfair labor practices, the complaint, dated May 22, 1952, alleged in substance that from about May 28, 1951, to the date of the complaint the Respondent had, by various acts and statements of its plant superintendent and of its composing-room foreman, interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and that, during September 1951, it dominated or interfered with the reactivation of the Wayside Press Employees' Independent Union, Inc., a long dormant labor organization.

The Respondent's answer, filed June 2, 1952, denied the commission of the unfair labor practices and pleaded that the complaint was barred by laches.

Copies of the complaint, charge, and notice of hearing were served on all parties, and pursuant to notice, a hearing was held in Los Angeles, California, on October 6, 1952, before me, the duly designated Trial Examiner.

At the close of the General Counsel's case, counsel for the General Counsel, hereinafter referred to merely as General Counsel, moved to amend the complaint by adding to the 8 (a) (1) allegation of the complaint the phrase, "including its [Respondent's] use of application forms requiring the disclosure of union affiliation of applicant." The motion was granted.

The General Counsel and the Respondent filed briefs with the Trial Examiner and the Respondent also filed a request for proposed findings of fact and con-

clusions of law. Concurrently therewith, the Respondent filed a sworn answer to the above-mentioned amendment to the complaint. In this answer, the Respondent alleges that until the amendment was made, it did not know that there was objection to its application form, that, as soon as such objection became known, the Respondent discontinued the use of such form and is now using a form which does not contain any reference to union affiliations of the applicant and has no intention of using the form complained of at any time in the future, that the Respondent had hired some employees whose applications disclosed that they were members of a union, that it had not been the intention of the Respondent to discriminate against union members, and that it had not in fact done so.

The first proposed finding of fact submitted by the Respondent is granted; the rest are denied because they are not wholly consistent with the findings herein. All the proposed conclusions of law requested are denied.

From my observation of the witnesses and upon the entire record in the case, I make the following findings of fact:

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a California corporation engaged in commercial and periodical printing and lithographing in Los Angeles County, California. For the period from October 1, 1951, to September 30, 1952,¹ the Respondent's total services and sales amounted to \$569,667.50. All of these were services rendered and sales made within the State of California. During this period it printed magazines for 14 publishers for which it received the sum of \$224,535.61. Of this amount, \$34,679.44 would represent the proportionate cost of magazines which 4 of the said publishers sold and distributed from California to points outside the State. Some of the publishers served by the Respondent are engaged primarily in types of business other than publications, the magazines published by them being distributed among employees locally as house organs. At least 4, however—the same 4 mentioned above making out-of-State sales—derive their revenue from the sale of magazines and the advertising matter printed therein.² Each of these 4 publishers receives, in California, revenues from outside the State in excess of \$25,000. In addition to the work done by the Respondent for the foregoing, the Respondent received from Perrett Company, an advertising agency in Los Angeles, \$12,672.18 for matter printed by the Respondent for that agency on behalf of the Sunkist Company. Of this sum, \$8,592.03 worth was sold to points outside the State of California. The Sunkist Company receives in excess of \$25,000 in California from points beyond the State in its business. Respondent's sales to firms engaged in interstate commerce exceeds \$50,000 annually.

From the foregoing it is apparent that not only does the Respondent print magazines, more than \$25,000 worth of which are destined for out-of-State shipment,³ but it also sells printed matter or performs services of a value in excess of \$50,000 to interstate enterprises, thus bringing the case within the doctrine

¹ The figures used for September 1952 in determining the annual business were estimated on an average figure of the prior 1952 months.

² The four publishers and the magazines published by them are: Arts & Architecture, Inc., testified to be the publisher of the magazine Arts and Architecture (but on the masthead of a magazine of that name I note that the publisher is named as John D. Entenza); Architects Associated, publishing Architectural Handbook and Architectural Products; the League of California Cities, publishing Western City; and Miller Freeman Publications.

³ The fact that title passes before actual shipment is immaterial. *National Gas Company*, 99 NLRB 273 and cases there cited; *L. E. Cleghorn and B. H. Swaney, Inc. (United Mine Workers of America, District 31, et al.)*, 95 NLRB 546.

of *Hollow Tree Lumber Co.*, 91 NLRB 635. Upon this evidence, I find that the Respondent is engaged in commerce within the meaning of the Act, that the Board's criteria for asserting jurisdiction are met, and that it will effect the policies of the Act to assert jurisdiction.⁴

II. THE ORGANIZATIONS INVOLVED

Pressmen's Union No. 78, and Wayside Press Employees' Independent Union, Inc., are labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

On or about August 17, 1951, Clifford Lambert applied for employment with the Respondent. The Respondent's general manager and plant superintendent, Harry Wood, had Lambert fill in an application form which, among other questions, asked, "Are you a member of Union? . . . If so, which one" After Lambert had filled in the application form, answering this question in the negative, Wood interviewed him for a few minutes. Lambert testified that in the interview, Wood asked him if he held a card, meaning a membership card in the Union, and that he answered, "No." Lambert then testified, "I don't remember the exact conversation, but it was something about protecting 'our plant' or 'ourselves from outsiders.'" Wood testified that he had no recollection of asking Lambert whether he held a card, but believed he did not, and he emphatically denied that he said the purpose was to protect against outsiders. I find that Wood had Lambert answer the question in the application form with respect to his union membership, but because Lambert's memory of this interview appeared to be impaired by lapse of time and because Wood's denial impressed me as honest, I credit his denial of the statement regarding "protection from outsiders." I also find that the question concerning Lambert's union affiliation was asked only in the application blank and that Wood did not ask it orally. Nevertheless such questioning is violative of Section 8 (a) (1) of the Act. (*E. H. Sargent and Co.*, 99 NLRB 1318.)

B. *Domination and interference with the formation of the Independent*

The Independent was incorporated on February 3, 1938. Between that time and 1942 it held 10 meetings and then became inactive. In about 1949 employee Arthur Irons started an employees' association for the sole purpose of paying sick employees \$25 for the first week of illness before insurance payments started. Foremen as well as the plant superintendent belonged to this association.

On about September 7, 1951, a day after the Union had passed out circulars in front of the plant, Irons decided to reactivate the Independent. Before doing so, he asked the opinion of his foreman, Herbert Stevens. Stevens, according to Irons, said "he thought it would be a little bit in our favor if we did have it that way." Irons asked Fred Bailey, the linotype foreman, to set the type for ballots and when that was done, Irons ran the ballots off on the plant press. Bailey set the type for the ballots without the customary work order used for business jobs, and no doubt he understood the significance of what he was doing. Irons

⁴ I find it unnecessary to rely on the additional evidence that the Respondent sold goods to, or performed services for, several establishments operating as an integral part of multistate enterprises, of a value in excess of \$50,000, or on evidence of purchases made within the State of items originating outside the State.

gave ballots to each delegate of the Employees' Association, told them to pass them out to employees and later to collect them. Foreman Stevens addressed the employees, telling them of the desirability of reactivating the Independent in order to keep outsiders out of the plant.

On September 10, 1951, with the marked ballots in a box, a meeting of the employees was held at the end of the lunch period. The lunch period is from 12:25 to 12:55 p. m. The meeting, according to minutes thereof, started at 1 o'clock and lasted about 30 minutes. Irons was temporary chairman. The ballots were counted and the results were announced as 39 for, and 13 against, reactivating the Independent.⁵ Foreman Stevens nominated Irons for president, and he was elected. Stevens then nominated Margaret Crowder for vice president, and she was elected. Members of the Employees' Association decided that officers, with the exception of the president and vice president, should "be carried over to the new association for the remainder of the year." At this time, Superintendent Wood was a member of the Employees' Association, but he was not present at the meeting of September 10 and he testified that he ceased to be a member after the Association reactivated the Independent. At the time of the meeting he was out to lunch, but Irons told him about it the same day.⁶ Wood testified that he did not know that the meeting was held on company time, but he imagined that it was. He testified that, although the regular lunch time was half an hour, the Respondent has been lax about enforcing it, that sometimes employees punched back in from lunch at the same time that they punched out, that in paying employees, half an hour is deducted from their overall time for the lunch period regardless of how long the employee is gone, and that employees who take more than the half hour at noon are not docked. I infer, however, that this applies to sporadic conduct of individual employees. It is inconceivable that the Respondent would tolerate a half hour's absence for everyone in the plant unless it approved the purpose of the meeting. Since no deduction in pay was made I conclude that Wood, who knew of the meeting, approved and ratified what was done.

A question is raised as to whether or not the Respondent is bound also by the conduct of its foremen. The General Counsel contends, and the Respondent denies, that the Respondent's foremen are supervisors within the meaning of Section 2 (11) of the Act. The Respondent's foremen are all working foremen who spend most of their time (75 to 80 percent) in production along with the other men in their departments. They lay out the work to be performed and

⁵ Three "Yes" ballots bore signatures, 2 by foremen, 1 had a comment written on it, and 1 was apparently checked in the "Yes" box and then the check was blacked out. The count included all these.

The ballot read as follows:

It has been suggested by several of Wayside employees that we reactivate the Wayside Press Employees' Independent Union, Inc. (This union was incorporated on the 3d day of February 1938, and has been in existence since that time. To better protect ourselves in the event of outside interference, it has been suggested that the Employees' Association take over the function of the Wayside Press Employees' Independent Union, Inc as of today.

(The Articles of Incorporation and By-Laws are on file and can be seen and read by anyone interested.

I am in favor of reactivating the Wayside Press Employees' Independent Union.

YES

NO

⁶ The record does not disclose the time of day when Irons told Wood, so it is not certain whether Irons told Wood before or after the meeting took place.

can assign particular jobs to employees in the department.⁷ They are responsible to the superintendent to see that the work is of the quality required.

Foreman Stevens testified that it was his duty to see that the publications moved along "through the composing room ready for the press room." With respect to his responsibility, he testified, "Well, I am the last man, you might say, to handle it before it goes to the press room. The proofs finally do come to me because I try to get them together and he [Wood] would hold me responsible, I imagine, in that respect, that I should not turn them over to him until they are ready for the press room." In performing his duties and responsibilities, Stevens testified, he does not need any discipline, he would just work with an employee who was behind and "they could see by that that we were in a hurry."

The foremen do not, as a general rule, either hire or fire or make recommendations therefor, although they do at times report to the superintendent facts from which the superintendent would determine whether or not to make a discharge. The superintendent makes the decision as to whether to work overtime. As to who decides which employees should work overtime or which employees should be assigned to a particular shift, the evidence is somewhat conflicting. Superintendent Wood testified that he was the one who determined not only that there should be overtime work but also, after consultation with the foreman, who should be given the overtime work. When Stevens was asked, however, if Wood ever asked him about which employees should be given the overtime work, Stevens answered, "No, we try very, very much to divide it evenly. We try to be fair with every one of the employees." This answer is ambiguous, but in view of the contradiction of Wood's testimony regarding consultation and other evidence indicating the normal routines, I infer that the delegation of the employees to work overtime would be left to the foreman's decision. During the period of time that the Respondent operated a third shift, Foreman Bailey, the linotype foreman, occasionally hired employees on his own.

All the evidence of supervisory authority of the Respondent's foremen was elicited from witnesses favorable to the Respondent, and their guarded answers apparently sought to minimize the authority of the foremen. But from all the available evidence in the case I conclude and find that the foremen, if they do not generally have authority to hire, fire, discipline, or make effective recommendations therefor, do have authority, in the interest of the Respondent, responsibly to direct employees under them.⁸ It is their responsibility to supervise the day-to-day flow of work in their departments to the extent entrusted to them. "Responsibility includes judgment, skill, ability, capacity, and integrity, and is implied by power."⁹ Hence, the authority of the foremen here is more than merely routine or clerical in nature, and I conclude and find that they are supervisors within the meaning of Section 2 (11) of the Act. In so deciding, I have not overlooked the contention of the Respondent that the Union admits foremen to membership. The fact that a foreman is admitted to union membership is not determinative of supervisory authority. It might be some evidence that the Union does not look upon working foremen as supervisors, although an examination of the evidence of agreements between the Union and other employers proffered in evidence by the Respondent by no means establishes even this. But

⁷ Foreman Stevens testified that he laid out the work on his bench and that the employees came and helped themselves to work, but he acknowledged that "if you come right down to it I could ask him [an employee under his supervision] to do certain things" and admitted that when he laid out the work on his bench he sometimes determined which employees would do the work.

⁸ See *Alabama Marble Company*, 83 NLRB 1047; *Rodney Milling Company*, 88 NLRB 1177; *Ohio Power Co. v. N. L. R. B.*, 176 F. 2d 385 (C. A. 6), cert. den. 339 U. S. 899.

⁹ *Ohio Power Co. v. N. L. R. B.*, 176 F. 2d 385 (C. A. 6).

in any event, the status of employees bearing the title of foremen must be decided in each case on its own facts, and it is the Board rather than the Union that must evaluate those facts and make the decision as to supervisory status.

Having found that the Respondent's foremen are supervisors within the meaning of the Act, I find that by the activities of Stevens, Bailey, and Schubert in the preparation of the ballots and the distribution thereof, and by their participation in the meeting of September 10 and the reactivation of the Independent, the Respondent has dominated the Independent and interfered with its formation.

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 described 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 of commerce.

V. THE REMEDY

Since it has been found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent dominated and interfered with the formation of the Independent. It will therefore be recommended that the Respondent completely disestablish it as the representative of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

Because the Respondent, by the unfair labor practices herein found, has demonstrated a disposition to ignore the fundamental purposes of the Act, I believe that, its supplemental answer notwithstanding, a danger of the commission in the future of other unfair labor practices by the Respondent exists. I shall therefore recommend that it cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent authorized by Section 8 (a) (3) of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Pressmen's Union, No 78, and Wayside Press Employees' Independent Union, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating, assisting, and interfering with the formation of Wayside Press Employees' Independent Union, Inc., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

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

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

[Recommendations omitted from publication in this volume.]
