

SEAMPRUFE, INC. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL. *Cases Nos. 16-CA-457 and 16-RC-903. March 4, 1953*

### Decision and Order

On October 13, 1952, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also recommended that the election held in Case No. 16-RC-903 on November 29, 1951, be set aside. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.<sup>1</sup>

The Board<sup>2</sup> has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

1. As found by the Trial Examiner, on November 20, 1951, just 9 days before the scheduled representation election was to be held, the Respondent made an antiunion speech to its employees on company time and property. On November 23, 1951, the Union sent a telegram to the Respondent requesting that it be given a similar opportunity to address the employees on company time and property. The Respondent answered this telegram on November 26, 1951, denying the Union's request.

On November 27, 1951, the Respondent made five additional antiunion speeches to its employees on company time and property. On the following day, the Union, by telegram, protested Respondent's conduct in continuing to make such speeches without giving the Union an equal opportunity to speak to the employees. The Respondent did not reply to this telegram. However, on the same day, the Respondent made another antiunion speech to its employees, on its premises during working hours, wherein it mentioned the Union's latest telegram and informed the employees that the Union's request would not be granted. The election was held on the following day, November 29, 1951.

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<sup>1</sup> The Respondent's request for oral argument is denied because in our opinion the record, including the exceptions and brief, adequately presents the issues and the positions of the parties.

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

The Respondent contends that: (1) The Union had full opportunity through personal conversation and solicitation, distribution of literature, and radio announcements adequately to inform the employees of the Union's position on the issues involved, (2) the Respondent did not have a no-solicitation rule,<sup>3</sup> and (3) in these circumstances, the Respondent did not violate the Act by refusing the Union's request to speak to Respondent's employees on company time and property. We do not agree. For reasons fully stated in *Metropolitan Auto Parts, Incorporated*, 102 NLRB 1634, we adopt the Trial Examiner's finding that, even in the absence of a no-solicitation rule,<sup>4</sup> the Respondent's failure to comply with the Union's request for an opportunity to reply to the Respondent's preelection speeches on company time and property violated Section 8 (a) (1) of the Act.

### Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Seamprufe, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

Interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, by any of the following conduct:

(a) During an organizational campaign by a labor organization, making antiunion speeches to the Respondent's employees during working hours and on the Respondent's premises without according, upon reasonable request, a similar opportunity to address the employees to the labor organization against which such speeches are directed.

(b) Making speeches to its employees threatening them with less favorable working conditions for the purpose of influencing its employees with respect to union activity, affiliation, assistance, or designation.

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

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<sup>3</sup> We do not adopt the Trial Examiner's finding that a no-solicitation rule was in effect at the Respondent's plant

<sup>4</sup> *Chairman Herzog* would dissent from this holding, for reasons set forth in his separate opinion in the *Metropolitan* case, if he did not consider himself bound by the decision of the full Board in that case.

(a) Post at its McAlester, Oklahoma, plant, copies of the notice attached hereto and marked "Appendix A."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent, 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the election held in Case No. 16-RC-903 be, and it hereby is, set aside.<sup>6</sup>

<sup>5</sup> In the event that this Order is enforced by 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."

<sup>6</sup> When the Regional Director advises the Board that the circumstances permit a free choice of representatives, we shall direct that a new election be held among the Respondent's employees.

## Appendix A

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT make speeches to our employees threatening them with less favorable working conditions for the purpose of influencing them with respect to union activity, affiliation, assistance, or designation.

WE WILL NOT, during a union organizational campaign, make antiunion speeches to our employees during working hours on our premises without according, upon reasonable request, a similar opportunity to address our employees to the labor organization against which such speeches are directed.

SEAMPRUFE, INC.,  
*Employer.*

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

This notice must remain posted for 60 consecutive 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 objections duly filed by International Ladies' Garment Workers' Union, AFL, herein called the Union, to the effect that Seamprufe, Inc., herein called Respondent, at its plant in McAlester, Oklahoma, had interfered in a Board-conducted bargaining election held among employees of Respondent, the National Labor Relations Board ordered that a hearing be held thereon. On December 5, 1951, the Union filed a charge of violation by Respondent of Section 8 (a) (1) of the National Labor Relations Act, as amended, based on the conduct previously asserted as constituting interference with the election. Upon this charge the General Counsel on June 9, 1952, caused the complaint herein to be issued. The cases having been consolidated for the purposes of hearing, and Respondent having denied interfering in the election and having filed an answer denying the unfair labor practice allegations of the complaint, a hearing upon due notice was held in McAlester, Oklahoma, on July 16, 1952, before the undersigned Trial Examiner, Horace A. Ruckel.

The General Counsel, Respondent, and the Union were represented by counsel and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence relevant to the issues.

Opportunity was afforded for oral argument and the filing of briefs. Briefs were filed by the General Counsel, the Union, and Respondent on August 5, August 6, and August 7, respectively.

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

#### FINDINGS OF FACT

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

Respondent is a New York corporation having its principal office and place of business in New York, New York, and a branch office and place of business in the city of McAlester, Oklahoma. During the year ending December 31, 1951, Respondent in the course of its business at the McAlester plant purchased raw materials consisting principally of piece goods and rayons valued in excess of \$500,000, of which more than 90 percent was shipped in interstate commerce to the McAlester plant from points outside the State of Oklahoma. During the same period Respondent sold products consisting principally of ladies' slips, gowns, and lingerie valued in excess of \$1,000,000, of which more than 75 percent was shipped in interstate commerce from its McAlester plant to points outside the State of Oklahoma.

I find, and it is not contended otherwise, that Respondent is engaged in and that its activities affect commerce.

##### II. THE LABOR ORGANIZATION INVOLVED

International Ladies' Garment Workers' Union, affiliated with the American Federation of Labor, is a labor organization admitting employees of Respondent to membership.

## III. THE UNFAIR LABOR PRACTICES

Pursuant to a stipulation for certification upon consent election entered into on November 19, 1951, between the Respondent and the Union, the Board on November 29, 1951, conducted an election among Respondent's employees at the McAlester plant. The Union lost the election. On March 31, 1952, the Regional Director made his report on the Union's objections to the election finding that Respondent had interfered with the employees' freedom of choice and recommending to the Board that the election be set aside. Respondent filed its exceptions to the Regional Director's report, and on May 16, the Board directed that a hearing be conducted with respect to the objections. On June 9, the Regional Director issued an order consolidating the unfair labor practices hearing with a hearing on the objections and exceptions to the election.

The issues thus raised relate to Respondent's conduct preceding the election and are those upon which the General Counsel also relies for his contention that a finding of unfair labor practices should be made. No question is raised with respect to the conduct of election itself.

## 1. Organizational efforts by the Union

The Union began organizing Respondent's employees at its McAlester plant in November 1947, following the opening of the plant the preceding July. These efforts were of a spasmodic nature until it began an intensive organizational drive preceding the November 29, 1951, election.

Respondent's employees enter and leave the plant through two doorways at the front of the building on Chicasaw Street, which runs through the plant site. Parking lots for the employees' cars are situated opposite the front of the plant and across Chicasaw Street. The plant grounds, including the parking lots, are fenced. There are gates on Chicasaw and C Streets which remain open and through which persons gain access to Chicasaw Street, the plant entrance, and the parking lots.

Sometime in June 1950, according to the uncontroverted and credited testimony of Sona Williams, one of the Union's principal organizers, while she and Golvin Street, another organizer, were standing on the steps to one entrance to the plant, Don Miller, plant manager, warned them not to stand on the upper step but only on the lower, since the former was Respondent's property and Respondent did not want them on its property. Thereafter union organizers confined themselves to the lower step and the street in front of the plant. I find, as the General Counsel contends, that Respondent thus effectively excluded union organizers from the plant, and that such exclusion amounted to a no-solicitation rule.

During the 60-day period preceding the election, Williams and Jackson, another union organizer, went to the plant nearly every day, distributed union literature, and spoke to employees as they came to and left work. Much of the time they were also in front of the plant during the noon lunch and rest periods. Williams admitted while testifying that going upon the parking lots was not necessary inasmuch as they were able to contact the employees who drove automobiles as they crossed the street and entered the plant.

During the period shortly prior to the election the Union held membership as well as open meetings in the Union's own meeting room, the Labor Temple, and in other buildings. Employees were also solicited by telephone and by personal calls at their homes. Beginning on November 17 and ending on November 28, the day before the election, the Union caused 63 "spot" announcements and a one-half hour program to be broadcast over a local radio station.

On November 23 and again on November 25, Respondent sent copies of a form letter to all of its employees praising Respondent's relationship with its employees, criticizing the Union in vigorous terms, and urging them to vote against it in the forthcoming election. This, according to Respondent's interpretation, would constitute a vote of confidence in Respondent. In short, the letters were of the familiar *American Tube Bending* variety.<sup>1</sup>

On November 20, 27, and 28, Miller and 2 other company officials made a total of 5 speeches to the employees over the public address system in the plant, urging them to vote against the Union. Apparently in one instance an official similarly addressed employees gathered in a meeting. These speeches were made on company time and the employees were not docked in their wages for listening and attending.

On November 23, following Miller's address of November 20 to the employees, the Union sent a telegram to Respondent demanding the privilege of addressing the employees "on company property and company time under (equal) conditions," and making the same demand as to any other speeches Respondent might make. In the alternative the Union requested permission for its representatives to solicit employees inside the plant. Respondent denied this demand in a telegram dated November 26, stating that the Union had full opportunity to organize employees outside the plant.

On November 28, the Union again sent a telegram to Respondent protesting the "continuous broadcast of propaganda" unless the Union was given an "equal opportunity" to speak to employees. This request was denied by Harold Caplin, Respondent's director of production, in the last of the speeches made by Respondent's officials later the same day.

With respect to the two letters and the several speeches which Respondent uttered to its employees, I find them not to contain any threat of reprisal or promise of benefit with the exception of Caplin's speech of November 28, the day before the election. After reference to conditions at another plant in another town, operated by one of Respondent's competitors and in which the Union had a contract, Caplin pointed out that this plant was working only 2 or 3 days a week 9 months to a year, and he compared such conditions unfavorably with those existing at Respondent's plant. He then went on to say:

This brings to you . . . why didn't the ILG do that—over there they are working 2 to 3 days a week for 9 month to a year, 100 to 125 people, in a building as big as this. What did they do for them. God helps those who help themselves. I have to help myself. I am helping you, and here it is. Listen to this—126, which you all know—it comes out of your ears by now—we sell for \$30 a dozen and it sells in the stores for \$3.98—you all know that don't you. We are going to sell it for \$22.50 a dozen, to sell for \$2.89. That's about a \$1.10 less in the store, and its \$7.50 less wholesale. Who says we have to? Who says we have to? We could simply close down for a few weeks and let normal sales work you three days a week, and let normal sales use it up, but no—we figured out how we could come out just as well . . . but you know what you got here. Look at it. Because the bed you sleep in is a pretty soft one. The bed that you get in might have some nail soup in it.

If Caplin had contented himself with pointing out conditions in the competing unionized plant and compared them unfavorably with conditions at Respondent's plant, and had argued objectively that organization of the McAlester plant if

<sup>1</sup> *N. L. R. B. v. American Tube Bending Company*, 134 F. 2d (C. A. 2) setting aside 44 NLRB 121; cert. den. 320 U. S. 768.

attended by higher wages might, as an economic matter, compel Respondent to operate on a 2 to 3 working-day week, the speech would have been unobjectionable. It seems to me, however, and I find, that Caplin went further than this. He clearly inferred not that blind economic forces to which Respondent might have to succumb might operate to curtail the working week, but that such a decision would be the result of Respondent's will, the exercise of which was contingent upon union organization of the plant. He seems to say that Respondent's will might be exercised in a fashion unfavorable to the employees if the Union won the election but favorably if it lost. I believe, as the General Counsel in his brief contends, that Caplin's statements with reference to the "soft bed" which the employees then had, and the possibility of obtaining a "hard bed," was reasonably calculated to convey the threat that Respondent would see to it that this disadvantageous condition would result if the employees voted for the Union.

The more fundamental issue in this case, however, has to do with the refusal of Respondent to grant the Union's request to reply to the speeches of Respondent's officers in the plant or, in the alternative, to use the plant in soliciting union support. The General Counsel cites *Bonwit Teller, Inc.*,<sup>2</sup> *Bernardin Bottle Company, Inc.*,<sup>3</sup> and *Metropolitan Auto Parts, Inc.*,<sup>4</sup> in support of his contention that when speeches are made by an employer to employees under circumstances similar to those here, the employer must accede to a union's demand for the same opportunity. Respondent's counsel in his brief seeks to distinguish these cases from the instant one.

In the *Bonwit Teller* case, unlike the situation here, there was a background of extensive unfair labor practices and a formal rule against solicitation in the store during working and nonworking time. In rendering its decision the Board found it "particularly persuasive" that the net result of the employer's denial of the union's request was to apply a no-solicitation rule discriminatorily. The Board said:

For an employer, in the face of such a rule, to utilize its premises for the purpose of urging its employees to reject the Union, and then to deny the Union's request to present its case to the employees under the same circumstances, is an abuse of that privilege which, we believe, the statute does not intend us to license.

In further exposition of its underlying rationale the Board further said:

There is, in addition, an even more fundamental consideration—wholly apart from the Respondent's disparate use of the no-solicitation rule—which justifies the result we reach. We believe that the right of employees, guaranteed by Section 7 of the Act, freely to select or reject representation by a labor organization necessarily encompasses the right to hear both sides of the story under circumstances which reasonably approximate equality. . . . Whatever opportunity that Union may have had to solicit employees outside of the store or at union meetings, it is clear that the Respondent's broad no-solicitation rule had deprived [the Union] of the most effective means of contact with employees namely, solicitation of employees while they were in the store.

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<sup>2</sup> 96 NLRB 608. Remanded 197 F. 2d 640 (C. A. 2). The court's decision was based upon the existence of a no-solicitation rule, and the Board was directed to conform its Order therewith.

<sup>3</sup> 97 NLRB 241.

<sup>4</sup> 99 NLRB 401.

In the *Biltmore* case, not cited by counsel,<sup>5</sup> where the employer addressed the assembled employees 2 hours before the polls opened, the Board held that there was no opportunity for the union adherents' reply to the employer's antiunion speech other than in the manner it requested. Unlike the *Bonwit Teller* case there was no general no-solicitation rule, but the Board said:

[The record] however, reveal[s] that at the very time the Employer addressed the employees on company time and property, it denied union spokesmen the similar opportunity. Certainly, the same legal consequences should flow from this conduct as would flow from the discriminatory application of an established rule against solicitation. For, in either case, the Employer is discriminating in favor of antiunion adherents to the serious detriment of union adherents.

The Board went on to quote *Bonwit Teller* when it referred to "an even more fundamental consideration" wholly apart from the disparate use of a no-solicitation rule. The Board repeated that the right to select or reject representation by a labor union "necessarily encompasses the right to hear both sides of the story under circumstances which reasonably approximate equality." Noting the absence of any unfair labor practice background, as well as the absence of any general no-solicitation rule, the Board held in effect that this was irrelevant because in both cases "the employer dedicated company property and time to a campaign against the Union, by refusing to accord the Union an opportunity to reply under equal circumstances."

In the *Metropolitan* case, 6 days before the election the union demanded that in the event that the employer addressed his employees on company time and property it be granted the same privilege. No reply was made to the request and on the day after its receipt and 2 days before the election the employer addressed its employees on the issues involved in the election. The Board held that there was a denial of the union's request to address the employees "under the same circumstances." The critical question said the Board, citing *Bonwit Teller* and *Bernardin Bottle*, was "whether the circumstances were such that only by granting the Union's request for use of the same forum could the employees have a reasonable opportunity to hear both sides of the issue on which they were about to vote."

In the *Metropolitan* case the Board took up the contention, made in the instant case, that prior to the employer's speech to the employees the union conducted an extensive preelection campaign by the distribution of circulars and by conversation with employees. Respondent here argues that the Union had ample opportunity to make its side of the case known to the employees and that Respondent's speeches and letters, first uttered a few days prior to the election, constituted the Employer's side of the case and, in effect, a rebuttal of the Union's arguments.

The General Counsel contends that the Union's side was not adequately expounded to Respondent's employees and submitted evidence to show that many if not most of them lived outside the city of McAlester in surrounding towns and in the country, that all but a few of Respondent's employees remained in the plant during their lunch hour and rest periods, and thus were out of contact with the union organizers at the plant entrances. I find as a fact that most or many of Respondent's employees did live outside the city limits of McAlester, and that although the Union had easy access to them over a long period of time as they went into the plant in the morning and came out in the evening they were at no time able to contact more than a few of them at lunch hour and rest periods and never inside the plant. I find such considerations, however, to be largely irrelevant.

<sup>5</sup> *Biltmore Manufacturing Company*, 97 NLRB 905.

### Conclusions

As I understand the effect of the Board's holdings in the cases cited, it is that regardless of what opportunity the union might have had to interview and persuade employees outside the plant, regardless of how long organization has taken place, and irrespective of how thoroughly the union might have exploited such opportunities, an employer who, either in the presence of a no-solicitation rule, as here, or in its absence, addresses its employees in its plant on the subject of union organization, must accord the same privilege to the union upon request under circumstances which approximate equality or, as in the language of the *Metropolitan* case, in the "same forum."

This, the Respondent here did not do. In failing to do so, and by delivering a speech which threatened its employees with reprisals if they supported the Union, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and interfered with the election November 29, 1951.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations 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

Having found that Respondent has engaged in certain unfair labor practices I will recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. Having been found that Respondent's officers in effect threatened its employees that if they joined the Union they would have less favorable working conditions, and that Respondent made speeches to its employees in the plant on company time and refused to accord the same privilege to the Union thus, as I find, interfering with their employees' free choice in the election on November 29, 1951, I will consequently recommend that the election be set aside.

Upon the basis of the above findings of fact and upon the entire record in the case I make the following:

#### CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]