

BABCOCK & WILCOX COMPANY *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, AFL. Cases Nos. 32-CA-263 and 32-RC-478. June 30, 1954

DECISION AND ORDER

On July 10, 1953, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceedings, 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that these allegations be dismissed, and he did not recommend that the election be set aside. Thereafter, the Respondent and the General Counsel each filed exceptions to the Intermediate Report and supporting briefs.

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 exceptions and briefs, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except to the extent that they are inconsistent herewith.

1. The Trial Examiner found that Respondent's employment manager, R. F. McBride, interrogated two job seekers, later employed by the Respondent, concerning their attitudes toward unions. He found the interrogation not violative of the Act, however, because he believed the employees' subsequent employment by the Respondent dispelled any coercive effect the interrogation might otherwise have had.

Chairman Farmer and Member Rodgers are satisfied, in the circumstances revealed by this record, that Respondent's inquiries of the prospective employees as to their union sympathies went beyond the routine compilation of hiring statistics.¹ Rather, in view of the many threats made during interrogation conversations--of which McBride's was only one instance--and the surrounding facts and circumstances, it may be reasonably inferred that the questioning of applicants by McBride unlawfully restrained them in the exercise of their rights under the Act.²

Members Murdock and Peterson also disagree with the Trial Examiner. They believe that the interrogation of these employees before they were hired conveyed to them the impression of employer hostility toward their concerted activities and was therefore coercive and unlawful without regard to the presence

¹ Compare McGraw Construction Co., Inc., 107 NLRB 1043.

² N. L. R. B. v. Syracuse Color Press, Inc., 209 F. 2d 596 (C. A. 2).

or absence of further unfair labor practices. This impression of hostility was not necessarily dissipated by their subsequent employment--they may have reasonably believed that the employer's decision to hire them was not incompatible with the employer's previously evidenced attitude of antagonism toward their union activities.

Accordingly, the Board finds that McBride's interrogation of Hugh Edwards and Marvin Brock violated Section 8 (a) (1) of the Act.

2. Respondent requested Police Chief W. R. Bruce to interview and check the moral character of prospective employees. The record contains uncontradicted testimony that Bruce, in doing so, interrogated and warned job applicants against joining the Union and asked them to report to him any attempt the Union made to solicit them to become members. The Trial Examiner found the Respondent not responsible for Bruce's coercive remarks on the ground that the evidence was insufficient to establish that he was, in making these remarks, acting within the scope of the authority delegated to him by the Respondent. We disagree. Bruce's unlawful acts were within the general area in which he had been authorized to act by the Respondent, and his conduct was not so different in kind from that authorized as to be outside the scope of his apparent authority.³ Accordingly, we find that Respondent violated Section 8 (a) (1) of the Act by the unlawful remarks made to prospective employees by its agent, Police Chief Bruce.

3. The Trial Examiner concluded that the Respondent's counsel, Thomas J. Tubb, did not exceed the bounds of legitimate trial preparation by his questioning of Respondent's employees. While we concur in this conclusion, we consider too broad the rationale employed by the Trial Examiner--that an attorney has the right to question a client's employees about their union sympathies and activities in order to determine possible bias and to evaluate the testimony of prospective witnesses. It is sufficient to point out that there is no evidence that either the purpose or the effect of Respondent counsel's conduct in interviewing Respondent's employees was to infringe upon their right to engage in concerted activities. Tubb did ask Respondent's employees several questions about their union activities in the past, questions which later proved unnecessary in this proceeding. But the record contains uncontradicted evidence, to which the Trial Examiner did not allude, which indicates that the great preponderance of Tubb's questions related to issues material to this proceeding. Also indicative of Tubb's intention to refrain from unduly intruding upon the privacy of the employees in their union affairs is the fact that he asked only about past events, and not about their attitudes toward the Union or reasons for engaging in union activities.

³ International Longshoremen's and Warehousemen's Union, C. I. O. (Sunset Line and Twine Company), 79 NLRB 1487, at 1509.

We find, therefore, that Respondent's counsel did not exceed the bounds of privileged inquiry in preparing Respondent's defense in this proceeding.⁴

4. We find, in agreement with the Trial Examiner, that by the following acts the Respondent violated Section 8 (a) (1) of the Act:

(a) Foreman Herbert Seifert's promise of benefit made to Ben Bacus on or about April 1, 1952, on condition that Bacus report to him the Union's activities in the plant.

(b) The threat communicated by Foreman Seifert to Bacus on or about April 11 that the leaders of the Union's campaign would suffer detriment because of their union activities if the Respondent should discover their identity.

(c) Foreman Seifert's threat of reprisal made to Bacus a few days before April 23, 1952, which was occasioned by Bacus' expressing an interest in joining a union.

(d) Employment Manager R. F. McBride's interrogation of Roosevelt Cooperwood.

(e) Foreman Jack Young's interrogation of Harold Lancaster and James Wilson.

5. With regard to the Union's objections to the election, the Trial Examiner found several instances in which the Respondent violated Section 8 (a) (1) during the period between the issuance of notice of hearing in the representation case and the election. However, he did not recommend that the election be set aside, finding these incidents so isolated as not to have interfered with the employees' free choice to any substantial or material extent. We have found additional instances whereby the Respondent violated Section 8 (a) (1) during this period. However, as more than a year has elapsed since the time of the election, we find that no useful purpose will be served in our setting the election aside. Accordingly, we shall dismiss the representation petition without prejudice to the filing of a new petition.

THE REMEDY

Having found that Respondent interrogated its employees, sought to secure information from them concerning the Union's activities, and made threats of reprisal and promises of benefit to them regarding their refraining from, or participating in, concerted activities, we shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We are also convinced that the unfair labor practices committed by the Respondent are potentially related to other unfair labor practices proscribed by the Act, and that the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventive purpose of the Act will be thwarted unless our order is coextensive with the

⁴Compare Partee Flooring Mill, 107 NLRB 1177.

threat. Accordingly, in order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, we shall order the Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act.

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 Respondent, Babcock & Wilcox Company, West Point, Mississippi, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating or questioning employees or prospective employees concerning their union membership, activities, connections, or sympathies; threatening employees with the loss of their jobs or impairment of job security or tenure because of union activity or membership; inducing or requiring employees or prospective employees, by promise of benefit or otherwise, to communicate to the Respondent information concerning the union activities of other employees; and making remarks to employees or prospective employees the purpose or effect of which is to coerce employees in the exercise of rights protected by Section 7 of the Act.

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, 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, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed by Section 7 thereof.

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

(a) Post immediately in conspicuous places in its plant located at West Point, Mississippi, copies of the notice attached hereto and marked "Appendix A."⁵ Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after having been duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, in conspicuous places, including all places where

⁵In the event 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."

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.

(b) File with the said Regional Director, within ten (10) days from the date of this Order, a report in writing setting forth in detail the steps which Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the petition filed in Case No. 32-RC-478 be, and it hereby is, dismissed.

Member Beeson took no part in the consideration of the above Decision and 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, as amended, we hereby notify you that:

WE WILL NOT interrogate or question employees or prospective employees concerning their union membership, activities, connections, or sympathies; threaten employees with the loss of their jobs or impairment of job security or tenure because of union activity or membership; induce or require employees or prospective employees, by promise of benefit or otherwise, to communicate to us information concerning the union activities of other employees; or make remarks to employees or prospective employees the purpose or effect of which is to coerce employees in the exercise of rights protected by Section 7 of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted 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.

BABCOCK & WILCOX 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.

Intermediate Report

STATEMENT OF THE CASE

Upon an amended charge filed by International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, respectively called herein the General Counsel and the Board, issued a complaint dated November 26, 1952, against Babcock & Wilcox Company, herein called the Respondent, alleging that the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act.

After the holding of a hearing in Case No. 32-RC-478, the Board issued a Decision and Direction of Election, dated June 3, 1952.¹ An election was conducted by the Board among the Respondent's employees on June 19, 1952. On June 23, 1952, the Union filed objections to the election. In his report on objections, dated August 29, 1952, the Regional Director for the Fifteenth Region found "substantial, credible and persuasive evidence supporting the allegations of the objections," and recommended that the Board sustain the objections and direct a new election. By an order dated September 19, 1952, the Board directed that a hearing be held on the issues raised by the objections and that ". . . the Hearing Officer designated for the purpose of conducting the hearing, shall prepare and cause to be served upon the parties a Report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said objections." On November 26, 1952, the Regional Director issued a combined notice of hearing and order consolidating the complaint and representation cases.

The Respondent filed an answer on about December 8, 1952, in which it admitted the jurisdictional allegations of the complaint but denied the commission of any unfair labor practices. A hearing was held before the undersigned Trial Examiner at West Point, Mississippi, from January 26 to January 30, 1953.

Both from the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New Jersey corporation, having its main office in New York, New York. It owns and operates a plant at West Point, Mississippi, where it is engaged in the manufacture of boilers and boiler parts. The Respondent also owns and operates plants in Ohio, North Carolina, Georgia, and Pennsylvania. The West Point plant is the only one involved in this proceeding.

¹The original charge in Case No. 32-CA-263 was filed by the Union on April 15, 1952. On the same date the Union filed a waiver insofar as such charge constituted a basis for objection in the representation proceeding.

During the period of 12 months before the issuance of the complaint herein, the Respondent manufactured at its West Point plant and sold for distribution outside the State of Mississippi boilers and parts having a value in excess of \$50,000. During this same period, the Respondent caused to be purchased and delivered to the West Point plant substantial quantities of raw materials from outside the State of Mississippi.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, AFL, is a labor organization which admits to membership employees of the Respondent.

III. THE OBJECTIONS TO ELECTION AND THE UNFAIR LABOR PRACTICES

A. Background: sequence of events

George Lockwood, International district representative of the Union, commenced organization of the Respondent's employees about the latter part of August 1951. However, it appears that the Union did not conduct an intensive campaign until about the middle of March 1952. On about two occasions during March, Lockwood together with employee James A. Rambo visited the homes of employees in order to solicit them to join the Union.

By letter dated April 10, 1952, the Union notified the Respondent that it represented a majority of the employees and requested a bargaining conference. Thereafter, the Union filed with the Board a petition for certification.

The Respondent discharged Rambo on April 14, 1952. The Union filed an unfair labor practice charge on April 15. On that same date the Union also filed a waiver of the charge in the representation proceeding. Pursuant to the Board's direction, an election was held on June 19. The Union lost the election by a vote of 92 to 65.

B. The discharge of Rambo

Rambo was hired by the Respondent as a welder on about December 26, 1951. Before that date he was employed by W. L. Wooten, an individual doing business as West Point Machine Shop. From about July 1951 until about May 1952, Wooten had a contract with the Respondent for the unloading and erection of steel at its plant.

Rambo worked as a welder for the Respondent until about 3 or 4 weeks before his discharge. He and another employee were the highest paid welders in the plant. Rambo changed over to "fitting" at the same rate of pay, and continued on this work until April 12. Herbert Seifert and Luke Wooten were his foremen.²

Rambo first learned of the Union's organizational campaign when he was visited by Lockwood during the early part of March 1952. On two occasions during March he accompanied Lockwood when the latter visited employees at their homes. During his lunch hour, Rambo talked to other employees about the Union.

At about the beginning of April, W. L. Wooten had a conversation with R. F. McBride, Respondent's employment manager. In a joking manner, McBride said to Wooten, "You sicked the Union on me." He told Wooten that he believed that Rambo and employee Kirby Mitchell, who formerly had been employed by Wooten, were "agitating for the Union," and asked him to speak to them "with the idea of trying to get them settled so they could hold their jobs." Wooten said, "I would fire them if I thought they were detrimental to other men." McBride replied the Respondent could not discharge them "without a legitimate excuse."³

² It appears that Seifert and Luke Wooten had joint supervision over the welders and fitters.

³ The above conversation was testified to by Wooten whom the undersigned credits. During his testimony it was obvious that he was reluctant to testify to any facts which he apparently considered to be against the Respondent's interests. However, he impressed me as an honest and sincere witness. McBride admitted having a conversation with Wooten, but testified that Wooten started it by mentioning that Rambo and Mitchell were working to organize the Union in the plant. McBride testified that Wooten said, "It looks like I am sicking the Union on you, don't it?" McBride denied the other statements attributed to him by Wooten. McBride did not impress me as a reliable witness.

On Saturday, April 12, Clayton Carl, Respondent's plant superintendent, told Foreman Seifert to assign an employee to welding "splice" plates on steel channels in a building extension that the Respondent was constructing. Seifert assigned Rambo to the job. Employee Marvin Brock was working with Rambo at the time. Concerning his assignment to the job, Rambo testified without contradiction as follows:

... Brock was helping me and about 9:30 Mr. Seifert came in and told me he had a job for me. He took me out to the south side of the building to the lean-to and he had two plates he wanted to have put on each end to splice the channel that supported the eave trough and showed me what he wanted done, and I went in to get my plates. First I went up and told Shorty Brock to take a lead outside. Then I went to get my plates and when I came back Seifert was out there. He might have said a few words, and then he went on inside and Brock wasn't there, the best I remember, and I went back in to get him and he told me that Seifert told him to go back on inside and jumped on him. I went to see Seifert then and he told me Brock had some work to do inside, that I could do it. I told him I wouldn't weld any more, I was a fitter. I didn't even have a shield.

* * * * *

... He told me he would fix me up one, and I told him he didn't have to go to all that trouble, he had welders walking all over each other.

He said, "I will fix you up one." So he went to his locker and fixed me up a shield and brought it back and I went outside to do the work.

On Sunday, Carl inspected the welds made by Rambo. He discharged Rambo on Monday, April 14. In this connection, Carl was questioned and testified as follows:

Q. Now, tell us what you did on Monday. Describe for us what you did on Monday when you came in.

A. I came in on Monday after the fellows all went to work I got ahold of Mr. Seifert, asked him to come over and look at that weld. I asked him who did it. He said Rambo. I said, "how about bringing Rambo over and let's take a look at it," so he went over and got Rambo and all three of us took a look at the weld and he asked Mr. Rambo whether he did this weld. He said yes.

I said, "That is poor weld, Rambo."

He said, "it suits me."

I said, "Now, Rambo, you don't mean that,"

He said, "Well, it suits me."

Q. That was the conversation?

A. That was the conversation.

Q. Did he at any time offer to do the job over?

A. Not to my recollection.

Q. Did he even suggest that he would like to?

A. Not to my recollection.

Q. Mr. Carl, what would you say his attitude was when you called it to his attention?

A. I would say it was bad. It was indifferent, just as much as it didn't make no difference whether the job satisfied the company or myself just so long as he was satisfied.

Q. Did you discharge him because of bad work or because of his attitude?

A. His attitude more than anything else. I didn't take him up there to show it to him with the intentions of firing him at the time.

Q. You had no intention of firing the man?

A. I had no intentions of firing the man. He told me the second time that that weld suited him, I told him that was enough, to go to the office and get his money.

Concerning his discharge, Rambo testified as follows:

Well, we went to work at 7:30 and I was putting angles around the plates again, and about 9:30 Mr. Carl and Mr. Seifert came up. Mr. Carl asked me did I do some welding out on the lean-to. I told him I didn't know, but I would go look at it and see, and I went out there

with him and he pointed to the weld. I told him yes, sir, I did it. He said, "You mean you would leave a poor job like that".

I said, "I don't see anything wrong with it."

He said, "I never thought you would leave a job like that. That is liable to fall and kill somebody."

I said, "Well, your welding foreman inspected it and he didn't say anything about it."

He said, "Well, it is a poor job."

I said, "Well, I still don't see anything wrong with it, but if you want me to correct it I will correct it."

He said, "No, I will get another welder to do that," and he had a few words with Seifert, then, and I started on back to my job.

He says, "Where are you going."

I said, "Back to work."

He said, "You are not going anywhere. Come back here."

I went back up and he didn't say anything for a few minutes, and I told him to make himself clear.

He said, "I will make myself clear. You are through," and I said, "Well, after all the hard work I have done on this building, you mean I don't even get another chance."

He said, "No, you are through. Pick your check up at the office."

Rambo admitted on cross-examination that he "possibly" had told Carl, "Well, it suits me." Seifert, who was called as a witness by the General Counsel, testified to the effect that he could not recall if Rambo offered to do the job over.

Carl impressed me as an honest and reliable witness. Accordingly, his version of the conversation at the time of discharge is credited.

I do not believe that the General Counsel has sustained the burden of proving that the Respondent discharged Rambo discriminatorily. While the conversation between Wooten⁴ and McBride, found above, casts suspicion upon the Respondent's motive, it is not sufficient.

The undisputed evidence shows that on the same day as Rambo's discharge employee William Smith burned off the splice plates in question and welded them to the channels again.⁵ He testified credibly that the two weld jobs which he removed were "poor" and did not have "any strength." Rambo admitted that his job "might have been rough" and that "it wasn't a first-class job."

Rambo testified that he had not performed any welding work for about a month before his discharge. However, Smith testified without contradiction that he also had not done any welding for at least 2 weeks before the job in question. Further, the evidence discloses that fitters were paid at the rate of 89 cents per hour. This evidence tends to show that the Respondent did not intend to use Rambo as a fitter exclusively, and that the Respondent did not assign him to a welding job in order to find an excuse for discharging him.

Accordingly, I find that the Respondent's discharge of Rambo on April 14, 1952, was not violative of the Act.

C. Interference, restraint, and coercion

Employee Hugh Edwards was hired by the Respondent during February 1952. On the day before his hiring, he was interviewed by Employment Manager McBride. Concerning his conversation with McBride, Edwards testified credibly as follows:

Well, he wanted to know what I wanted to do and what I could do and I told him I could burn, I thought, and later on in the conversation he wanted to know, in other words, where I had been working and I told him on a pipe line job for the William Brothers and Davis and somehow it come up about the union and I spoke up and told him it was partly organized on this job, but it wasn't all organized. Then Mr. McBride asked me what I thought about

⁴At the close of its case, the Respondent moved to strike the testimony of Wooten. Ruling on the motion was reserved. Except for the testimony related above in connection with Rambo's discharge, the motion to strike is granted. Wooten is not named in the complaint or in the bill of particulars.

⁵Smith was employed as a welder at \$1.11 per hour. Rambo's rate was \$1.25 per hour. Smith left the Respondent's employ during July 1952.

the union and I told him I thought it was all right if it was handled right, and I think that was about all that was said, all excepting after that then he told me that he would call me when he needed me, which he did.

Employee Brock testified that about 4 days before he was hired on March 3, 1952, he was interviewed by McBride; that McBride asked him for his opinion on unions, and that he told McBride that unions were "O. K. in places."

It is found that McBride's interrogation of Edwards and Brock was not violative of the Act. Although both employees indicated that they might be in favor of unions, McBride thereafter employed them. As the act of hiring clearly was incompatible with any hostility on the part of Respondent toward the applicants because of their union sympathies, the interrogation was lacking in coercive effect.⁶

About April 1, 1952, Ben Bacus, Respondent's timekeeper, had a conversation with Foreman Seifert. Concerning this conversation, Bacus was questioned and testified credibly as follows:⁷

Q. (By Mr. Brissman) Just what was this conversation you had with Mr. Seifert?

A. Well, as I was making a routine check I saw Mr. Seifert in the plant and I just asked him what was all this about a union coming in.

Q. What did he say?

A. He said he had heard something about it and asked me what I knew.

Q. He asked you what you knew about the union?

A. Yes.

Q. What did you say to that?

A. I told him I didn't know anything very much about it only what I had heard.

Q. And?

A. And he said he had heard some talk of it and if I heard anything about it he would appreciate it if I would tell him, he would make it up to me in some kind of way.

It is found that Seifert's promise of benefit to Bacus if he would keep him informed concerning the Union's progress constitutes interference, restraint, and coercion.

On April 11 or 12, Bacus had another conversation with Seifert about the Union. In substance, Seifert told Bacus that if the Respondent found out which employees were leaders in the Union's campaign, "they would be sorry of it and it wouldn't work out well for them." It is found that Seifert's threat of reprisal because of union activity constitutes interference, restraint, and coercion.

On about June 24, 1952, employees Brock, Edwards, Leo Rambo, and John Thompson had a conversation with Plant Superintendent Carl. These employees had heard rumors from merchants about a petition being circulated in the town for the Respondent to discharge adherents of the Union, and they decided to talk to Carl as a group in order to find out the truth of the matter. Carl replied to them, "Well, what is bothering you all? Do you have a guilty conscience? . . . Who the hell has been fired?" He also told them that he did not know anything about the petition, and asked them why they wanted the Union. He said, "it won't help you."⁸

It is found that Carl's statements were not violative of the Act. He did not make any threat of reprisal, and his statement that he did not know anything about the petition was sufficient to deny the rumor. I am of the opinion that his other statements are protected by Section 8 (c) of the Act, especially since the employees initiated the conversation.

About a week or two before the start of the hearing herein, Thomas J. Tubb, Respondent's attorney, interviewed and questioned some employees in preparation for the Respondent's defense. Employees Cooperwood, Lancaster, Leo Rambo, and Thompson testified in this connection. Cooperwood testified on direct examination that Tubb asked him if he would join the Union. On cross-examination he denied that Tubb had questioned him concerning his union sympathies. It is apparent from his testimony that Cooperwood was confused between

⁶Cathey Lumber Company, 93 NLRB 510.

⁷Although the evidence indicates that Bacus was not included in the appropriate unit, there is no contention in the case that he was a supervisory employee.

⁸The above statements of Carl are taken from the credited portions of the testimony of Brock, Rambo, Thompson, and Carl.

the conversation that he had with Tubb and a prior one that he had with Police Chief Bruce, which will be discussed hereinafter. Lancaster testified that Tubb asked him if he had attended any union meetings and if he knew Lockwood. Rambo testified that Tubb asked him if Lockwood had ever visited his home and if he had attended union meetings. Thompson testified that Tubb questioned him concerning the union activities of the employees and asked him if any union meetings were held in his home.

It is found that Tubb's interrogation of the employees does not constitute a violation of the Act.⁹ Contrary to the General Counsel's contention, I am of the opinion that in preparing his case an attorney has a right to question his client's employees with respect to their union sympathies and activities. Otherwise, it is difficult to understand how an attorney could detect possible bias or properly evaluate the testimony of a prospective witness. In support of his contention, the General Counsel cites in his brief the Board's decision in Katz Drug Company, 98 NLRB 867. In that case the company through its personnel manager or district manager engaged in extensive interrogation by soliciting affidavits from 280 of its employees in preparation for a suit in a State court. The Board found a violation of the Act. Aside from the fact that an attorney was not involved, it appears that the company sought information which was not necessary to its suit and that the Board relied on this fact in arriving at its finding.

D. The objections

Some few days before April 23, 1952, employee Bacus had a conversation with Foreman Seifert. Seifert told him that he would be glad when the Respondent got the plant organized so that Bacus would not have to make out reports. He stated that Bacus was just a "glorified timekeeper." Bacus replied in a joking manner, "I better join the timekeepers union." Seifert then said, "If you do you will go out the gate . . . on your . . . tail . . . You all ought to know you can't continue talking about the union." Seifert also told him that it did not look as though Bacus had enough work to keep him occupied, and that he (Seifert) "guessed" he should talk "to the boss about it."

It is found that Seifert's remarks to Bacus constitute interference since they contain threats of reprisal.

On about June 9, 1952, the Respondent hired some colored employees. In this connection, Employment Manager McBride testified without contradiction that during the early part of June he had a phone conversation with W. R. Bruce, police chief of West Point; that he asked Bruce to interview and check the "moral character" of some prospective employees and to send them to him, that Bruce interviewed about 15 or 18 colored persons; and that he (McBride) thereafter interviewed and hired some of them. These employees were not eligible to vote in the election which was held on June 19. Employees Spraggins, Cooperwood, Morton, and Basket testified that they were interviewed by Bruce before being hired by the Respondent.

Concerning his conversation with Bruce, Spraggins testified without contradiction as follows:

He told me to go out there and work and do what they tell me to do and, you know, go out and be a good hand, make them a good hand and, you know, don't go to laying down on the job and if anyone asked about the union, he said don't join the union.

* * * * *

Well, he said, "Don't sign anything. If anything come up on our side to come back and report to him, on our side of it," he said, so that is all I know.

Cooperwood, Morton, and Basket testified to similar conversations with Bruce.

The record shows that Bruce was the Respondent's agent for the limited purpose of checking the moral character of prospective employees. In my opinion the evidence is insufficient to hold that Bruce was acting within the scope of his authority when he questioned the employees about the Union. Accordingly, it is not found that the Respondent was responsible for Bruce's coercive remarks.

Cooperwood testified that after his interview with Bruce he talked to McBride, and that McBride asked him if he would join the Union. Cooperwood replied that he would not. McBride denied that he questioned Cooperwood in this respect. His denial is not credited, and it is found that such interrogation constitutes interference.

⁹Calcasieu Paper Co., Inc., et al., 99 NLRB 794.

On about June 16, employee Lancaster had a conversation with his foreman, Jack Young. Lancaster testified, "Mr. Young came to the machine and said, 'I hear you boys are going to have an election here the nineteenth,' and I told him I heard a little about it and he wanted to know which side of the fence I was on and I didn't know right then."

At the hearing the parties stipulated that if employee James Wilson were called as a witness, he would testify in part as follows:

Young came up to me at my machine in the afternoon. A colored boy was standing there, Joe V. Cannon. He should have heard what was said. He was my helper. Young said, "I hear you boys are going to have an election. How do you stand?"

I answered, "I am neutral."

He said, "Oh, you can't be that."

"I am."

He said, "You can't be that way. You will have to be one or the other, for or against."

"I told him that I could, that the company was a big company and the union was a big organization. I could get fired either way."

Young said, "You wouldn't get fired either way you vote."

Young denied that he interrogated Lancaster and Wilson concerning their vote in the election. He testified, in substance, that he had belonged to the Union in Barberton, Ohio; that employees, including Lancaster and Wilson, at times approached him and asked him questions about the Union; and that he answered their questions if he was able.

I believe that Lancaster was the more reliable and credible witness. Therefore, Young's denials are not credited, and it is found that his interrogation of Lancaster and Wilson constitutes interference.

On about June 17, the Respondent sent the following letter to its employees:

Tomorrow, the National Labor Relations Board will conduct an election at our plant to determine whether a majority of those who vote desire to change the present relationship under which we have been working together. To get a proper result it is important that everyone entitled to vote exercise this right.

A vote for the union is a vote for an outside agency to do all your talking in "all matters pertaining to wages, hours, and working conditions." A vote of "NO", which is located on the right-hand side of the ballot, is a vote of confidence in your present management.

As you consider your action in this important matter, ask yourself if your status under Company leadership is something you can improve by paying strangers to act as your leaders.

Consider seriously the kind of leadership you want. It is unselfish leadership, interested in your personal welfare, or is it self-seeking? Ask yourself why strangers have become interested in your welfare.

We have looked upon our organization as a family. In the brief time we have worked together you have had a fair opportunity to get to know how we look upon our associates and the kind of people we are.

We will not neglect our responsibilities to you. Although the decision is yours, we are asking for a vote of confidence. We want your expressions of confidence in us, and we would like to have you feel that all we have done indicates that the West Point Works is not only the type of place in which you like to work, but that your management is the type of management that you want. So, if you don't want a union, don't be hesitant about voting "NO".

To summarize, the evidence shows violations of the Act in that Seifert made coercive remarks to Bacus, a timekeeper who was not included in the unit; in that McBride interrogated Cooperwood who was not eligible to vote in the election; and in that Young interrogated Lancaster and Wilson concerning their vote in the election. These isolated incidents constitute the only evidence in support of the Union's objections. The General Counsel did not contend either at the hearing or in his brief that the Respondent's letter of June 17, 1952, was violative of the Act. From the record as a whole I do not believe that the Respondent's conduct after April 15, 1952, the date of the waiver signed by the Union, interfered with the employees'

free choice at the election to any substantial or material extent.¹⁰ Accordingly, it will not be recommended that the election be set aside.

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 unfair labor practices, the undersigned will recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies 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. International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, 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 the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication]

¹⁰ Wilson and Company Inc., 95 NLRB 882.

THE ITEM COMPANY *and* NEW ORLEANS NEWSPAPER
GUILD, LOCAL 170, AMERICAN NEWSPAPER GUILD, CIO.
Case No. 15-CA-556. June 30, 1954

DECISION AND ORDER

On September 25, 1953, Trial Examiner Richard N. Ivins, 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 and the Union each filed exceptions to the Intermediate Report and supporting briefs. On December 21, 1953, and February 3, 1954, the Respondent filed motions to supplement its brief, to which, in each instance, the Union filed statements in opposition. The Respondent's motions are granted and the supplemental briefs are accepted.

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 exceptions and briefs.