

In the Matter of ARTON STUDIOS, INCORPORATED *and* AMALGAMATED
LOCAL 77, PLAYTHINGS, JEWELRY AND NOVELTY WORKERS INTER-
NATIONAL UNION, C. I. O.

Case No. 4-C-1677.—Decided August 19, 1947

Miss Helen F. Humphrey, for the Board.

Mr. Emil F. Goldhaber, of Philadelphia, Pa., for the respondent.

Mr. Eugene H. Clarke, Jr., of Philadelphia, Pa., for the Union.

Mr. Melvin J. Welles, of counsel to the Board.

DECISION

AND

ORDER

On January 7, 1947, Trial Examiner Isadore Greenberg 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.

The Board has reviewed the Trial Examiner's rulings 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 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 additions hereinafter set forth.

We agree with the Trial Examiner's finding that the respondent, by the conduct of one of its supervisors in assaulting an organizer of the Union, violated Section 8 (1) of the Act. We are ordinarily loath to entertain a charge of this nature, inasmuch as the assault was an isolated incident, which might well have been, and apparently was, settled in the police courts. Nevertheless, it is clear that the conduct in question interfered with the organizational freedom of the respondent's employees, in derogation of the rights guaranteed in Section 7 of the Act, and constituted a violation of Section 8 (1) of the Act.

74 N L R B, No 201.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Arton Studios, Incorporated, Philadelphia, Pennsylvania, and its officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, C. I. O., 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 as guaranteed in Section 7 of the Act, by interfering in any manner with the efforts of Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, C. I. O., or any other labor organization, to distribute literature to the respondent's employees outside the respondent's plant.

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

(a) Post at its plant at Philadelphia, Pennsylvania, copies of the notice attached to the Intermediate Report, marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the respondent's representatives, 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;

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

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

¹ Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words, "A Decree of the United States Circuit Court of Appeals Enforcing"

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 interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, CIO, 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 in any manner interfering with the efforts of the aforesaid Union, or any other labor organization to distribute literature to our employees outside our plant.

All our employees are free to become or remain members of this union, or any other labor organization.

ARTON STUDIOS, INCORPORATED,

Employer.

By _____
(Representative) (Title)

Dated _____

INTERMEDIATE REPORT

- Miss Helen F. Humphrey*, for the Board.
- Mr. Emil F. Goldhaber*, of Philadelphia, Pa., for the respondent
- Mr. Eugene H. Clarke, Jr.*, of Philadelphia, Pa., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed by Amalgamated Local No. 77, Playthings, Jewelry and Novelty Workers International Union, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated November 25, 1946, against Arton Studios, 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 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449, herein called the Act. Copies of the complaint, the amended charge, and notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that on or about August 1, 1946, the respondent, through one of its supervisors, James Wilson, assaulted an organizer of the Union while the latter was dis-

tributing union literature to the respondent's employees; threatened, disparaged, and expressed disapproval of the Union and its organizers; and thereafter interfered with the further efforts of a union organizer to persuade the respondent's employees to join the Union, thereby interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act, and engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

Thereafter the respondent duly filed its answer, denying the foregoing allegations of the complaint.

Pursuant to notice a hearing was held at Philadelphia, Pennsylvania, on December 18, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties.

At the conclusion of the hearing, the undersigned heard oral argument by counsel for the respondent and the Board. Although opportunity to file briefs and/or proposed findings of fact and conclusions of law was afforded the parties, no such briefs or proposed findings and conclusions were received.

Upon 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, Arton Studios, Incorporated, is a Pennsylvania corporation, with its plant and principal office located in Philadelphia, Pennsylvania. The respondent is engaged in the manufacture, sale, and distribution of lamps and lamp shades.

During the year 1945, the respondent, at its plant, used raw materials consisting principally of china and electrical fixtures, valued in excess of \$50,000, of which approximately 10 percent in value was shipped to it from points outside the Commonwealth of Pennsylvania. During the same period, the respondent manufactured finished products at its plant valued in excess of \$100,000, of which approximately 50 percent in value was shipped to points outside the Commonwealth of Pennsylvania.

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Amalgamated Local No. 77, Playthings, Jewelry and Novelty Workers International Union, CIO, is a labor organization admitting to membership employees of the respondent at its plant in Philadelphia, Pennsylvania.

III. THE UNFAIR LABOR PRACTICES

A. Interference, restraint, and coercion

On the morning of Thursday, August 1, 1946, two organizers of the Union, Joseph Gorelick and John V. Bianco, stationed themselves at points near the entrance to the respondent's plant, from which they distributed to the respondent's incoming employees, leaflets soliciting the latter's affiliation with the Union.

Bianco distributed the leaflets at a street corner approximately 35-40 feet from the entrance to the building in which the respondent's plant is situated;¹ Gorelick was standing on the next to the highest of the four steps leading to the entrance of the building.²

While Gorelick was distributing the leaflets as above described, Jack Wilson,³ superintendent in charge of production in the respondent's plant, approached the entrance. The testimony of both Gorelick and Wilson is substantially in agreement, and the undersigned finds, that as Wilson drew near Gorelick, the latter handed him a circular; informed him that he (Gorelick) was "from the CIO," and was distributing circulars to the respondent's employees; and asked him whether he worked for the respondent. Gorelick further testified that Wilson thereupon retorted, "It's none of your g— d— business. We don't want any union, and no part of any organizer. You get out of here. This is private property, and you have no business here",⁴ that he (Gorelick) asserted his right to be where he was, and his intention to continue handing out leaflets; that an altercation ensued, which was climaxed by Wilson punching Gorelick, who fell, sprawling backwards down the steps, that Wilson, after making some statements to Gorelick to the effect that the latter was a "g— d— communistic CIO organizer," and that he (Wilson) "didn't want any part of the G— d— union," then went into the building, and finally, that he (Gorelick), after arising, continued to distribute circulars, as did Bianco. Wilson testified that the encounter between himself and Gorelick was limited to an exchange of words; denied that he had struck or pushed Gorelick at any time during the incident; and indeed that he had any time "touched" him. For the reasons set forth below, the undersigned does not credit this denial, and finds that Gorelick's version of the incident, as summarized above, is substantially true. In resolving the conflict between the testimony of Gorelick and Wilson, the undersigned feels constrained to credit that of Gorelick for the reason that it is in large part corroborated by the credible testimony of Bianco. Moreover, Wilson's denial that there had been any physical contact between himself and Gorelick is rebutted by the testimony of Clarke, the Union's attorney, who impressed the undersigned as a meticulously honest witness. Clarke testified that at a hearing before a City Magistrate, on assault charges lodged

¹ The respondent's plant occupies the fifth floor of a 6 or 7 story building on West Columbia Avenue, between Second and Third Streets, in the city of Philadelphia. Various other factories occupy the other stories. There is one common entrance to the said building.

² The above findings as to the location from which Gorelick carried on his leaflet distribution is based on Gorelick's testimony, which was corroborated by that of Bianco Respondent's witness. Wilson, testified that Gorelick was standing in the vestibule of the building, inside the doors of the entrance. The undersigned has relied on Gorelick's testimony on this point for the reason that it was corroborated by the testimony of another credible witness. In any event, whether Gorelick was distributing the circulars from a point on the outside steps, or from inside the common entrance to the building, would not affect the decision in this case, since the undersigned concludes from the record as a whole that neither location is under the respondent's control.

³ Wilson, who is referred to in the complaint as "James" Wilson, gave his name at the hearing as "Jack" Wilson.

⁴ Wilson's version of the above conversation is that he answered Gorelick's question as follows: "Who wants to know? if you want to give out the circulars, go right outside and give them out. Give them out all you want, but don't stand inside and block the doorway." The undersigned credits Gorelick's version, which was corroborated in part by Bianco, who testified that from his position about 35 feet distant, he observed Gorelick and Wilson in heated conversation on the steps outside the entrance and at one point, when Wilson raised his voice to a shout, heard him say, "get off my G— d— step, you s— o— b—!"

against Wilson, the latter, who at first denied, as he did before the undersigned, having had any physical contact with Gorelick, admitted under cross-examination that he "did brush against Mr. Gorelick."

As has been found above, Gorelick was engaged peaceably in distributing union literature to the respondent's employees, in a public place,⁵ when the respondent's supervisor, Wilson, assaulted him in an attempt to force him to leave. Moreover, from the tenor of the remarks made by Wilson at the time, it is clear that Wilson's objections to Gorelick's presence were based on his opposition to Gorelick's organizational activities, rather than, as Wilson testified, to his choice of a location from which to carry on such activities. It is clear, therefore, that the respondent's⁶ interference with Gorelick's legitimate efforts to organize its employees is not justified by the fact that the aforesaid organizer had stationed himself on the steps leading to the building in which its plant is located. Such interference, under similar circumstances, has consistently been held to constitute a violation of the Act. Cf. *Matter of The Triplett Electrical Instrument Co.*, 28 N. L. R. B. 572, 577-580; *Matter of Tennessee Products Corporation*, 41 N. L. R. B. 326, 329-333. And this is so, even where, as in the instant case, no employees of the respondent are shown to have witnessed the incident, since the employer's hostility to the Union, and his interference with its activities, "were of a character normally to be calculated to reach the employees and to discourage them from joining or assisting the Union" (*Matter of The Federbush Co., Inc.*, 34 N. L. R. B. 539, 547-548).

On the basis of the foregoing, and of the entire record, the undersigned concludes and finds that by the above-summarized conduct of Superintendent Wilson, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby committing unfair labor practices within the meaning of Section 8 (1) thereof.

B *Alleged interference, restraint, and coercion*

The complaint alleges that in addition to attempting to prevent the Union from distributing leaflets to its employees, the respondent also interfered "with an organizer of the Union in his efforts to persuade its employees to join the Union." In support of the latter allegation, the Board introduced testimony by Gorelick to the effect that on Monday, August 5, 1946, he resumed his efforts to organize the respondent's employees; that in furtherance of these efforts he parked an automobile, equipped with a loud-speaker, on the street in front of the respondent's plant; and then and there proceeded to make various union announcements and solicitations, over the loud-speaker, addressed to the respondent's employees. Gorelick testified that he continued his aforesaid speaking over the loud-speaker from about 11 a m to about 11:30 a m. During this time, Gorelick testified further, a man who identified himself as the superintendent of the building, accompanied by another man, approached him with a request to stop his speak-

⁵ It will be remembered that the entrance to the building before which Gorelick had stationed himself is a common entrance, used by the public to gain ingress and egress to and from the premises, not only of the respondent, but also to and from the premises occupied by the other tenants of the building. Thus, Gorelick was standing in a place not owned or controlled by the respondent, and from which it had no right to evict him.

⁶ Pursuant to well-settled authority, the respondent is answerable for the conduct of such a supervisory employee as Wilson. *International Association of Machinists, et al v. N. L. R. B.*, 311 U S 72.

ing, informing him that the respondent, and another tenant of the building, had complained that Gorelick was annoying them by his activities. Gorelick insisted on his right to continue, and, according to his testimony, informed the men that they could determine that he "had the legal right to be there" by calling the district police captain. Shortly thereafter, a police car arrived on the scene, and Gorelick was directed by the police officers to lower the volume of his loud-speaker. It is the Board's theory that the respondent brought about the above-described interference with Gorelick's solicitations for the Union over the loud-speaker, by pressing complaints against his activities with the superintendent of the building, which later "resulted in police action, in an effort to have Mr. Gorelick banned from the vicinity." There is no evidence in the record, aside from the testimony of Gorelick as above set forth, that the respondent did in fact initiate the requests made by the alleged building superintendent and the police, that Gorelick cease, or modify, his amplified speech. The undersigned is not willing to base findings on such uncorroborated hearsay testimony. The undersigned will therefore recommend that the complaint be dismissed insofar as it alleges that the respondent committed unfair labor practices by engaging in the conduct above discussed.

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 thereof.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices affecting commerce, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including the posting of appropriate notices to its employees in connection with the foregoing.

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. Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, CIO, 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 (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.
4. The respondent has not engaged in unfair labor practices by procuring or attempting to procure third persons to interfere with the efforts of an organizer of the Union to persuade its employees to join the Union.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, it is recommended that the respondent, Arton Studios, Incorporated, of Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, CIO, 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 as guaranteed in Section 7 of the Act, by in any manner interfering with the efforts of Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, CIO, or any other labor organization, to distribute literature to the respondent's employees outside the respondent's plant.

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

(a) Post at its plant at Philadelphia, Pennsylvania, copies of the notice attached to the Intermediate Report herein marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being 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;

(b) File with the Regional Director for the Fourth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the date of the receipt of the Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent interfered with an organizer of the Union in his efforts to persuade its employees to join the Union, other than by its interference with the circular distribution of the Union as hereinabove found.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of ex-

ceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

ISADORE GREENBERG,
Trial Examiner.

Dated January 7, 1947

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 interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Amalgamated Local 77, Playthings, Jewelry and Novelty Workers International Union, CIO, 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, by in any manner interfering with the efforts of the aforesaid Union, or any other labor organization, to distribute literature to our employees outside our plant.

All our employees are free to become or remain members of this union, or any other labor organization.

ARTON STUDIOS, 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