

PUBLISHERS PRINTING COMPANY, INCORPORATED *and* HERBERT HORTON.
Case No. 9-CA-675. September 27, 1954

Decision and Order

On January 14, 1954, Trial Examiner Herbert Silberman 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds merit in the Respondent's exceptions.

The charge in this case was filed by Herbert Horton, an individual. At the hearing, the Respondent moved to dismiss the complaint contending that the General Counsel was without authority to issue the complaint because Horton was an agent of or a "front" for the International Typographical Union, herein called the Union, a labor organization which is not, and was not at the time the complaint issued, in compliance with Section 9 (f), (g), and (h) of the Act.

The Trial Examiner found no merit to this contention and denied the motion to dismiss. In his view, the evidence, though it presented some suspicious circumstances, was insufficient to support a finding that the Union was the real party in interest in this proceeding and that Horton acted as its agent or "front" in filing the charge. We do not agree.

The Union had been attempting for some time to organize the composing room employees of the Respondent's plant, and its organizational activity was in full swing at the time the charge in this proceeding was filed. Herbert Horton had been foreman of the composing room from May 1952 until he was discharged on May 22, 1953. He had been a member of the Union since April 1951, and even after his promotion to his supervisory position had been active in soliciting employees of the Respondent for membership in the Union. He filed the charge which initiated this proceeding on May 25, alleging that the Respondent had violated Section 8 (a) (1) and (3) of the Act. The charge read in part as follows:

The Petitioner, Herbert H. Horton, charges that the Company, through its authorized agents and representatives, discharged

said petitioner on or about May 22, 1953, because of union activity, and membership, and by this act and other acts has violated the Labor Management Relations Act of 1947, as amended.

The account which Horton gave at the hearing of the circumstances surrounding his filing of the charge was not convincing. He testified that before filing the charge he did not discuss his discharge with any official of the Union and did not contact the union local. He contacted a labor attorney whom he had not met before, who prepared the charge for him without compensation. This attorney was secretary of the Kentucky Federation of Labor. The Trial Examiner found that Horton's testimony relating to his activities at the time he filed the charge was "not altogether plausible," and that Horton did not impress him as a "reliable witness."

After filing the charge, Horton had very little to do with the case. The Intermediate Report details the interest taken in this proceeding by the Union, and the comparison with Horton's lack of interest is striking. The Union's secretary prepared from the Union's application list the witness list which Horton gave the field examiner who investigated the case. The Union's secretary also notified employees to come to a hotel for interviews with the field examiner; and the secretary and president of the Union accompanied witnesses to their interviews. A witness who testified before the field examiner and the Trial Examiner stated, "All I know I was supposed to testify in this case. . . . I was doing what the Union wanted me to do." At every union meeting, a report was made on the case and it is significant that at a meeting which Horton attended, a union official, not Horton, reported on the progress of the case.

On October 28, 1953, after the complaint had issued in this proceeding, alleging only that the Respondent had violated Section 8 (a) (1) of the Act, Horton signed a partial withdrawal of the charge with respect to the 8 (a) (3) allegation, apparently at the request of the General Counsel who because of Horton's supervisory status had not included the allegation of discrimination in the complaint. After the partial withdrawal, the remaining portion of the charge was not, of course, concerned with individual redress for Horton.

In our opinion, the circumstances in this case—particularly Horton's solicitation for the Union although he was a supervisor, Horton's unreliable explanation of how he filed the charge, the interest manifested by the Union in processing a charge which as originally filed was concerned primarily with seeking a remedy for a discharged supervisor, and the comparative lack of interest shown by Horton—require the conclusion that when Horton filed the charge in this proceeding he was acting in behalf of the Union. Accordingly, as the

noncomplying Union was in fact the charging party, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge duly filed by Herbert H. Horton, an individual, the General Counsel of the National Labor Relations Board, by the Regional Director for the Ninth Region (Cincinnati, Ohio), on July 31, 1953, issued a complaint against the Respondent, Publishers Printing Company, Incorporated, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing thereon were duly served on the parties.

Thereafter, the Respondent filed a motion to strike certain paragraphs of the complaint on the ground that Herbert Horton, the Charging Party, was acting for and on behalf of a labor organization which had not complied with the filing requirements of Section 9 (h) of the Act. Said motion, on August 25, 1953, was denied in its entirety, without prejudice to its being raised again at the hearing. The Respondent duly filed an answer denying that it had committed the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held on November 16, 1953, at Louisville, Kentucky, before Herbert Silberman, the undersigned Trial Examiner. The General Counsel and the Respondent were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to present oral argument, and to submit briefs to the undersigned was afforded all parties. Decision was reserved on Respondent's motion, made at the hearing, to dismiss the complaint. Said motion is denied for the reasons set forth below. The General Counsel and Respondent have submitted briefs to the undersigned which have been carefully considered.

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

FINDINGS OF FACT

I. RESPONDENT'S MOTION TO DISMISS THE COMPLAINT

At the close of the hearing, the Respondent moved to dismiss the complaint on the ground that the charging individual, Herbert Horton, was "fronting" for the International Typographical Union, a labor organization which has not complied with Section 9 (f), (g), and (h) of the Act and in consequence is disqualified from filing a valid charge upon the basis of which the General Counsel may issue a complaint. "Fronting," as used herein, refers to an attempt by a noncomplying union to circumvent the provisions of Section 9 (f), (g), and (h) of the Act and to obtain benefits of the Act by acting through an individual who is exempted from filing reports and affidavits pursuant to these provisions. Respondent's motion, therefore, raises a question of fact as to whether Horton's motivating reason and principal purpose in filing the charge in this case were to seek redress for alleged violations of the Act by the Respondent directed against himself and other employees or were to enable the International Typographical Union, hereinafter referred to as the Union, by subterfuge to initiate an unfair labor practice proceeding while failing to comply with the filing and affidavit requirements of Section 9 (f), (g), and (h) of the Act.¹

The evidence relative to the issue of fronting in this case shows that Herbert Horton has been a member of the Union since April 1951. He was promoted to foreman of the composing room at Respondent's plant in May 1952 and held that position until he was discharged a year later. During April 1953 the Union was engaged in an active campaign to organize Respondent's composing room employees. Horton solicited more than 1 employee to join the Union and, in addition, spoke

¹ *Wood Parts, Inc.*, 101 NLRB 445, 446.

favorably about the Union to 3 employees. This appears from the record to be the total extent of Horton's union activity. Horton has never been an officer of the Union. He was charged with no special responsibility for organizing Respondent's employees. The chairman of the organizing committee for the employees in Respondent's composing room was William H. Parker, not Horton.

On Friday, May 22, 1953, Horton was discharged. The following Monday he consulted Sam Azell, an attorney and secretary of the Kentucky Federation of Labor, at the latter's office. Azell prepared the charge in this proceeding which Horton signed and mailed to the Ninth Regional Office of the National Labor Relations Board. The charge, which accuses the Respondent of having engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, in principal part, reads as follows:

The Petitioner, Herbert H. Horton, charges that the Company, through its authorized agents and representatives, discharged said petitioner on or about May 22, 1953, because of union activity and membership, and by this act and other acts, has violated the Labor-Management Relations Act of 1947, as amended.

Horton testified that he did not seek the advice of any official of the Union prior to filing the charge against the Respondent because he wanted to act "as an individual." He also testified that he had not met Mr. Azell before May 25, 1953, although he was acquainted with the reputation of Mr. Azell through reading about the attorney in newspapers. Horton did not pay Azell any fee for his services in the matter.

When a field examiner of the National Labor Relations Board advised Horton that he wanted to interview Horton and his witnesses, Horton communicated this fact to Charles Burrows, secretary of Louisville Local No. 10 of the International Typographical Union. Burrows caused Respondent's composing room employees to be advised that they should meet with the Board field examiner. On the two occasions when Respondent's composing room employees appeared at the hotel designated for their interviews with the Board field examiner, some of the employees were accompanied by the president or secretary of the Local Union while they were going from their place of employment to the hotel. These officers of the Local Union remained in the lobby of the hotel during part of the time the employees spoke with the field examiner in a suite occupied by the latter. There was also testimony that some reference was made to the instant case at 3 or 4 union meetings held between the date on which the charge was filed and the date of the hearing. Horton testified that he first discussed the instant case with officers of the Union during the latter part of June 1953.

The avowed purpose of the Act is not to favor or promote unions as such. It is to promote and protect the rights of individual employees to join or not to join unions and to be free from coercion and interference either way.² Any person, including a stranger to the labor contract, may file a charge pursuant to Section 10 (b) of the Act to vindicate infringements upon rights guaranteed employees by the Act.³ An otherwise valid charge filed by an individual is not vitiated because a noncomplying union was active in the employer's plant at the time that the employer is alleged in the charge to have infringed upon employee rights guaranteed by the Act,⁴ or a noncomplying union assisted the individual in preparing and filing the charge,⁵ or in the prosecution thereof,⁶ or a noncomplying union is in a position to benefit from the proceedings initiated by the charge.⁷ On the other hand, the complaint will be dismissed if the charge which initiated the proceedings was filed by an individual whose purpose in taking such action was to advance the interest of a noncomplying union even though such individual coincidentally may have had a

² *N. L. R. B. v. Augusta Chemical Co.*, 187 F. 2d 63 (C. A. 5); *N. L. R. B. v. Hymie Schwartz*, 146 F. 2d 773 (C. A. 5).

³ *Southern Furniture Mfg. Co. v. N. L. R. B.*, 194 F. 2d 59 (C. A. 5), cert. denied 343 U. S. 964.

⁴ *N. L. R. B. v. Augusta Chemical Co.*, *supra*.

⁵ *N. L. R. B. v. Globe Wireless, Ltd.*, 193 F. 2d 748 (C. A. 9); *N. L. R. B. v. Fredrica Clausen, d/b/a Luzerne Hide & Tallow*, 188 F. 2d 439 (C. A. 3), cert. denied 342 U. S. 863; *N. L. R. B. v. Augusta Chemical Co.*, *supra*.

⁶ *W. T. Rawleigh Company, v. N. L. R. B.*, 190 F. 2d 832 (C. A. 7); *The Sun Company of San Bernardino, California*, 103 NLRB 359.

⁷ *N. L. R. B. v. L. Ronney & Sons Furniture Mfg. Co.*, 206 F. 2d 730 (C. A. 9); *Southern Furniture Mfg. Co. v. N. L. R. B.*, *supra*.

personal interest in obtaining redress for an alleged discrimination or other violation of the Act against himself.⁸

There are only three reported cases in which the complaint in an unfair labor practice proceeding was dismissed on the ground that the charging individual was "fronting" for a noncomplying labor organization. In these three cases, as in the instant case, the charging party did not admit that he was acting as an agent for a noncomplying labor organization and the decision in each case that the charging party, in fact, was "fronting" for a noncomplying labor organization was based upon circumstantial evidence. Analysis of the facts upon which the decisions in these cases rested is relevant to ascertain the nature of the circumstantial evidence which the courts and the Board have relied upon to find "fronting" in an unfair labor practice proceeding. The first of the three cases is *N. L. R. B. v. Alside, Inc.*, 192 F. 2d 678 (C. A. 6), decided on November 26, 1951. In this case, the original and amended charges, filed by an individual, Lawrence E. Worley, Jr., were not limited to his individual grievances, but stated, in substance, that the employer discharged Worley and other employees because of their membership in and activities on behalf of United Steel Workers of America, C. I. O., a labor organization. Worley was president of a local affiliate of the named union and as president supervised the activities of pickets during a strike at the employer's plant. The court, in its opinion, stated that naming the union in the charges filed by Worley "indicates for whom he was sponsor, even though he designated himself 'as an individual.'" The bases of the charges were exactly the same as they would have been if they had been made by the Union and signed by Worley as its President. The purpose was to inform the Board that "by the act set forth in the paragraph above and by other acts and conduct it" (respondent) "has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights granted in Sec. 7 of the said Act." The court further stated:

Considering the question as a whole, it stretches credulity to the breaking point to believe that Worley did not on October 20, 1948, file the charges as a representative of the Union, when before, after and even on that day, he was its chief, active protagonist. His signature, followed by the descriptive words, "an individual," does not destroy the evidential facts, most of which Worley himself admits. Our conclusion is that when Worley filed the charges he was acting as a "front" or "agency" of the Union.

The second case is *N. L. R. B. v. Happ Brothers Company, Inc.*, 196 F. 2d 195 (C. A. 5), decided on April 15, 1952. The facts set forth in the court's opinion show that Imogene Crawford was president of the local affiliate of the noncomplying union. She called the meeting at which a strike vote was cast. She made up and directed a picket line during the strike. She advised the union members to sign a mass application for reemployment. In short, the court reasoned, "this record compels the conclusion that from the beginning and throughout the period here involved Mrs. Crawford was truly the union's chief protagonist." The charges filed by Mrs. Crawford were not limited to her individual grievances. The charges alleged that the employer had discriminatorily discharged Mrs. Crawford and many other employees because of membership in and activities on behalf of the noncomplying union and by this and other acts the employer interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act. The court in reaching its ultimate conclusion that Imogene Crawford filed the charges as a "front" for the noncomplying union noted that "the charges were in every respect the same as they would have been had they been prepared and filed by the Union and signed by Imogene Crawford as its president."

The third case is *Wood Parts, Inc.*, 101 NLRB 445, decided on November 21, 1952. In this case, L. D. Vincent, the individual who filed the charges, was a paid field representative of the noncomplying United Mine Workers immediately preceding his employment by the respondent company. Vincent was a leading advocate among the respondent's employees that they become affiliated with District 50 of the United Mine Workers. After being laid off by the company, Vincent was put back on the United Mine Workers' payroll for a period of about 6 months, which immediately followed the date Vincent filed his original charge and included the date he filed an amended charge in the case. The charge Vincent filed was on behalf of himself and others. The Board reasoned:

In our opinion, it stretches credulity to the breaking point to believe that Vincent did not file the charges on behalf of the United Mine Workers, when before, after, and even on the day he filed his amended charge, he was not only

⁸ *Wood Parts, Inc., supra.*

its chief active protagonist, but also a paid field representative of that organization. . . . The circumstances in this case call for the conclusion that when Vincent filed the charges he was acting as an agent or "front" for the United Mine Workers, which was the real party in interest.

The significant facts common to each of the three cases, discussed above, in which it was found that the individual who filed the charges was "fronting" for a non-complying union are: (1) At about the time the charge was filed the charging individual was the chief protagonist among the employees at the company's plant of the interested but disqualified union; (2) the charging individual was an officer or paid representative of the union at about the time the charge was filed; and (3) the charge specifically asked for redress for a number of other union members as well as for the charging individual.⁹ None of these factors are present in the instant case: (1) The charge herein seeks relief for Horton alone;¹⁰ (2) Horton has never been an officer or paid representative of the Union; and (3) the evidence does not establish that Horton was the chief protagonist of the Union at Respondent's plant. The testimony shows that Horton's union activity was limited to soliciting more than 1 employee to join the Union and to speaking favorably about the Union to 3 employees. There is no evidence concerning the extent of union activity of any of the other employees in Respondent's plant. There is, therefore, no basis for comparing Horton's union activity with that of any other employee or for concluding that Horton was a leader of the union movement at Respondent's plant or was more active in it than other employees. Furthermore, William H. Parker, not Horton, was chairman of the organizing committee at Respondent's plant. This fact tends to indicate that Parker probably was the chief union protagonist among Respondent's employees.

The Respondent, although recognizing that the evidence in this case does not provide the same kind of pattern from which findings of "fronting" were molded in the three cases cited above, nevertheless, argues that "fronting" has been proved by (1) the testimony concerning Horton's and the Union's activities subsequent to the filing of the charge, and (2) the alleged implausibility of Horton's testimony with respect to the circumstances surrounding the preparation of the charge.

After the charge herein was filed Horton spoke about the matter to the president and secretary of the Louisville Local of the Union. Also, Horton received a communication from a field examiner of the National Labor Relations Board advising him to produce his witnesses for interview by the field examiner. Instead of attending to the matter himself, Horton asked Charles Burrows, secretary of Local No. 10 of the Union, to do so. Respondent's composing room employees twice went to a hotel designated by the Board's field examiner for their interviews. The testimony shows that on each of these occasions some of the composing room employees were accompanied by an officer of the Union while going from their place of employment to the hotel, and that the president and secretary of Local No. 10 of the Union remained in the lobby of the hotel at least during part of the time that the interviews were taking place in the suite occupied by the Board field examiner. In addition, some reference to the instant proceeding was made at 3 or 4 union meetings held between the date on which the charge was filed and the date of the hearing herein. The resolution of an issue of "fronting" involves an inquiry into the state of mind of the charging individual at the time the charge was filed.¹¹ Events that transpire subsequent to the filing of the charge are immaterial in determining a question of fronting except insofar as such subsequent events reflect upon the state of mind of the charging individual at the time he filed the charge. The Union's interest in the case and activity in assisting the Board in its investigation in order to obtain whatever possible benefit it might from the circumstance that a charge against the Respondent had been filed is not inconsistent with the absence of collusion between the Union and Horton relative to the filing of the instant charge. Likewise, the fact that Horton spoke about the case with the president and secretary of the Louisville Local of the Union after he filed the charge and also asked a union official to contact the witnesses and advise them to appear before the Board field examiner is inconclusive as evidence of any intended deception on the part of Horton when he filed the charge herein.

⁹ See cases cited in footnote 7, *supra*.

¹⁰ I agree with the argument advanced by the Respondent in its brief that Horton attached no significance to the words, "and other acts," which are contained in the charge.

¹¹ *N. L. R. B. v. Happ Brothers Company, Inc.*, *supra*, where the court stated, "The controlling question in this case is: Did the employee, Imogene Crawford, really and truly file the charge as an individual or was her act a mere sham, an artifice, and device?"

I agree with the Respondent that Horton's testimony that he consulted no one about filing a charge in this case during the weekend intervening between his discharge and the day he visited Sam Azell,¹² and that on his own initiative he contacted Sam Azell, a stranger to Horton, who assisted him in the preparation of the charge without compensation, is not altogether plausible. Horton did not impress me as being a reliable witness. However, although I do not believe that Horton's testimony concerning the circumstances surrounding the preparation and filing of the charge is wholly reliable, I do not, and cannot on the record herein, infer that the Union was the real instigator of the charge and that Horton acted as its agent or "front." If Horton's testimony were disregarded in its entirety, still there would be no evidence in the record to justify such inference. The Respondent in its brief hypothesizes that:

What undoubtedly happened is this: Immediately after his discharge, he went to the union officers and told them of his discharge, and wanted them to do something about it. He was a good union man, he was seeking members for the union, he had been fired because of his union activities, and the union should protect him. The union told him that they would—that they would file a charge with the Board claiming that he had been unlawfully discharged, but that the charge would have to be in his (Horton's) name; it would have to appear as a charge being filed by Horton as an individual because the union officers had not filed the necessary non-communist affidavits which were required by the Act.

Even if there were evidence in the record to support Respondent's speculations, there still would be no basis upon which to find "fronting." On the facts postulated by the Respondent, Horton's purpose in filing the charge was to obtain individual redress and he merely enlisted the assistance of the Union for such purpose, which would not constitute objectionable "fronting."¹³

There are facts present in the record herein which give rise to a suspicion that Horton may have filed the charge as a representative of the disqualified International Typographical Union, rather than from a sincere purpose to seek redress for an unfair labor practice committed against himself and other employees. Such facts are Horton's position as a supervisor on the date of his discharge which placed him outside the area of protection afforded employees by the Act, the unreliability of Horton's testimony concerning the circumstances surrounding the preparation of the charge, and the active interest the Union took in the progress of this case. However, the evidence upon which such suspicion is based is not adequate to support a finding that, in fact, Horton filed the charge herein as a "front" or "agent" for the noncomplying Union.

The Respondent also contends that because the only specific violation of the Act set forth in Horton's charge relates to his discharge, when the General Counsel decided there was no merit to such allegation the entire charge should have been dismissed. In this case, there is substantial variance between the allegations of the charge and of the complaint. The charge alleges that Horton was discharged "because of union activity and membership." It also contains the general catch-all phrase, which is common to most charges filed with the Board, that by such conduct "and other acts" the Employer has violated the Act. The complaint does not contain any allegation that Horton was discriminatorily discharged but is limited to allegations of violations of Section 8 (a) (1) of the Act by conduct such as interrogation, surveillance and threats.¹⁴

The Respondent misconstrues the nature of an unfair labor practice charge. A charge is not a pleading.¹⁵ The charge merely sets in motion the machinery of an inquiry.¹⁶ The complaint, not the charge, frames the issues. The scope of the complaint is not dependent upon the specific content of the charge. It may be broader than the charge which initiated the Board's investigation and may contain allegations of unfair labor practices based upon matters uncovered by the Board during its

¹² Horton testified that prior to his discharge he had had some discussion with other employees in the composing room with respect to the possibility that he might be discharged for his union activity and that such discharge would be an unfair labor practice.

¹³ Footnotes 5 and 6, *supra*.

¹⁴ After the complaint was issued, at the request of the General Counsel, Horton filed a partial withdrawal of his charge with respect to the alleged violation of Section 8 (a) (3) of the Act

¹⁵ *N. L. R. B. v. Indiana & Michigan Electric Company*, 318 U. S. 9; *Kansas Milling Company v. N. L. R. B.*, 185 F. 2d 413 (C. A. 10).

¹⁶ *Southern Furniture Mfg. Co. v. N. L. R. B.*, *supra*.

investigation.¹⁷ Responsibility for framing the issues in an unfair labor practice proceeding rests upon the General Counsel, not the charging party.

It is not within the province of the Trial Examiner to decide whether the General Counsel exercised his discretion wisely by issuing the instant complaint. Contrary to the contention of the Respondent, I find that a valid charge having been filed in this case, the General Counsel had authority to issue a complaint. Accordingly, Respondent's motion to dismiss the complaint herein is hereby denied.

II. THE BUSINESS OF THE RESPONDENT

Publishers Printing Company, Incorporated, is a corporation with its principal office and place of business in Louisville, Kentucky. It is engaged in printing trade magazines, catalogues, books, and newspapers. During the past 12 months, which period is representative of all times material hereto, the Respondent, in the course and conduct of its business operations, purchased and caused to be shipped from points outside the State of Kentucky to its plant in Louisville goods and materials valued in excess of \$80,000. During the same period, Respondent sold and shipped printed products and materials worth in excess of \$250,000 from its plant in Louisville to points outside the State of Kentucky.

III. THE UNFAIR LABOR PRACTICES

The evidence adduced by the General Counsel relating to violations of Section 8 (a) (1) of the Act by the Respondent remains entirely uncontradicted. The Respondent called no witnesses to testify in its behalf.

The General Counsel does not contend that any statements made by officials of the Respondent to Herbert H. Horton, while he was employed as a foreman by the Respondent, constitute evidence in support of the allegation of the complaint. Similarly, I find that statements made by Frank Simmons, the general manager of the Respondent, to various employees that Horton would be discharged because of his union membership and activity do not constitute evidence of any unfair labor practice. Absent unusual circumstances, an employer is privileged under the Act to discharge a supervisor for joining a union or engaging in union activity. Therefore, an employer who advises employees that it will exercise such privilege likewise does not commit an unfair labor practice.¹⁸

It appears that the organizational drive of the Union among Respondent's composing room employees reached its climax during the month of April 1953. On April 26, 1953, there was a union meeting which a number of Respondent's composing room employees attended for the purpose of taking their obligation, that is, formally becoming members of the Union. Respondent's general manager, Frank Simmons, apparently learned of this meeting. He drove to the union hall where the meeting was to take place and parked his car in a position where he was able to observe the employees going into the building. That this was Simmons' purpose for appearing at the union hall is established by the testimony of Robert A. Baker, William H. Parker, and particularly William Evans. Evans testified that he was told by Simmons that the latter "was parked there in front of the union hall to watch the door and those who entered they would be subject to discharge if they entered the union hall and took their obligations."

Evans further testified that on April 26 when he approached the union hall, Frank Simmons, who was parked close by, called him. Simmons persuaded Evans and another employee, Logan Jones, to get inside the car. During the succeeding conversation, according to Evans' testimony, Simmons said, "He wouldn't accept the union under any circumstances"; and "that he might be at the time clock on Monday morning, the following Monday, and ask those before they punched in, the employees before they punched in, who joined the union and who hadn't, and the ones who had joined the union, he would hand them their checks and the ones who had not joined the union would go about their regular duties in the shop."¹⁹ Simmons also promised to refund to Evans the union initiation fee which the latter had al-

¹⁷ *N. L. R. B. v. Globe Wireless, Ltd.*, 193 F. 2d 748 (C. A. 9); *N. L. R. B. v. Kingston Cake Co., Inc.*, 191 F. 2d 563 (C. A. 3); *Cathey Lumber Co.*, 86 NLRB 157, enfd. 185 F. 2d 1021 (C. A. 5). The Board has not accepted the restriction upon this doctrine expressed by some courts that variance between the allegations of the complaint and the charge is permissible only if there is a close relationship between the violations set forth in each. It is, therefore, unnecessary to rule upon whether such close relationship exists in this case.

¹⁸ See *Panaderia Sucesston Alonso*, 87 NLRB 877

¹⁹ Simmons did not effectuate this threat.

ready paid, and said he was going to replace Horton as foreman, "but if he did it would be someone who did not join the union."

Robert A. Baker testified that about noon on Sunday, April 26, 1953, Frank Simmons telephoned him, and among other things, promised him an increase in pay if he did not go to the union meeting that afternoon. Likewise, William H. Parker testified that about noon, on April 26, Frank Simmons telephoned him and said that he would make it worth Parker's while if Parker did not go to the union meeting. Parker further testified that on the evening of the same day Simmons again telephoned him and asked him who had attended the meeting and who had taken the obligation.

Jack C. Byerley testified that on June 3, Jim Orr, the then foreman of the composing room, told the witness "that anybody caught going to the union meetings would be fired." Byerley further testified that on June 24 when he advised Jim Orr, that he was going to see Mr. Wilkerson, the Board field examiner, Orr asked Byerley if he remembered what he had been told the other time. Byerley said he did and Orr replied, "Well, you can tell that union to get you all a job."

I find that the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8 (a) (1) of the Act, by: (a) Questioning its employees in regard to their membership in, sympathy for, and activities on behalf of the Union; (b) promising benefits to its employees if they do not join the Union or engage in union activities; (c) threatening employees with possible discharge and foreclosure of opportunity for advancement to the position of foreman if they join the Union; (d) engaging in surveillance of union meetings for the purpose of discouraging membership in, sympathy for, and activities on behalf of the Union by its employees.

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 II, 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.

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

CONCLUSIONS OF LAW

1. Publishers Printing Company, Incorporated, is, and at all times relevant herein was, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them 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.]

BULL INSULAR LINES, INC., ET AL. *and* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION DISTRICT COUNCIL OF THE PORTS OF PUERTO RICO (ILA), PETITIONER

PUERTO RICO MARINE CORP. ET AL. *and* UNION DE TRABAJADORES DE ABORDO Y MUELLE DE PONCE INDEPENDENTE, PETITIONER

EASTERN SUGAR ASSOCIATES (A TRUST), PETITIONER *and* LOCAL UNION No. 1745, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (ILA)

PUERTO RICO DRY DOCK AND MARINE TERMINAL, INC. *and* CONFEDERACION GENERAL DE TRABAJADORES DE PUERTO RICO (AUTENTICA), PETITIONER