

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a recommended order 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 discourage membership of our employees, or any applicants for employment, in Amalgamated Clothing Workers of America, AFL-CIO, or in any other labor organization, by refusing to hire any applicant for employment or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees or applicants for employment in the exercise of their rights to self-organization, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities.

WE WILL offer to the individuals named below employment at the same or substantially equivalent positions at which they would have been employed had they not been discriminated against, without prejudice to any seniority or other rights and privileges they might have acquired, in the manner set forth in the section of the Trial Examiner's Intermediate Report entitled "The Remedy":

Emma Roebuck
Dolly Rackley
Johnnie Carter
Louise Hickman
Geneva Jordan
Mae Gosa
Katie Scott

Evelyn Bowen
Hugh H. Bowen
Verbie Grant
Mabel Favela
Trilby Nadeen Gosa
Mary Banks
Maxine Covin

WE WILL make whole the above-named persons and Mary Jordan for any loss of pay suffered by reason of the discrimination against them, in the manner recommended by the Trial Examiner.

Our employees are free to become, remain, or refrain from becoming or remaining members of the Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization.

T.I.L. SPORTSWEAR CORPORATION,
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.

International Woodworkers of America, AFL-CIO and Central Veneer, Incorporated. *Case No. 25-CB-396. April 21, 1961*

DECISION AND ORDER

On December 20, 1960, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices but recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent and the General Counsel filed exceptions to the Intermediate Report together with 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, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

We disagree with the conclusion of our dissenting colleague that Stringer was not acting as an agent of the Respondent in connection with the matters involved in this proceeding.

As set forth in the Intermediate Report, Gorman, who was clearly an agent of the Respondent, instructed Stringer in the procedure to be followed if the employees of Central wished to be represented by Respondent; arranged to furnish Stringer with authorization cards for that purpose; and utilized the signed authorization cards which Stringer had procured in support of a petition which he filed with the Board on behalf of Respondent. Stringer was not a rank-and-file employee of Central and not an official of the Respondent, and he was, as to the employees of Central, an outsider. As such he had been approached by them "to find out how to form themselves into a union," and he had volunteered to organize them on behalf of Respondent. The role of Stringer was apparent to the Respondent.

In these circumstances we conclude that when Respondent, acting through Gorman, accepted his offer, instructed him in the procedures to be followed, procured the cards for him, and accepted the fruits of his efforts by filing a petition based on the signed cards he secured, it made him its agent for the purpose of organizing Central's employees. It is immaterial that Gorman did not "instruct" Stringer that he was to organize Central's employees, as Gorman must have known that such was Stringer's sole purpose in securing the authorization cards. We find, accordingly, that Respondent was responsible for Stringer's conduct in furtherance of that organizational purpose, whether or not that specific conduct was authorized or ratified.¹

Although we have found that Respondent has engaged in unfair labor practices, we agree with the Trial Examiner that a remedial order is not warranted, and shall therefore dismiss the complaint.

[The Board dismissed the complaint.]

MEMBER FANNING, dissenting:

I am unable to find on the record before me that the General Counsel has sustained the burden of proving that Stringer was acting as an agent for the Respondent.

¹ See *International Brotherhood of Teamsters (The Lane Construction Corporation)*, 111 NLRB 952, in which the Board held that the Union was responsible for the conduct of a rank-and-file employee when the Union knew that employee was acting as a steward and accepted the fruits of his activities as a steward.

The facts relating to Stringer's alleged agency relationship are not seriously in dispute and are as follows:

On March 18, 1960, Walter Gorman, a service representative of the Respondent for an area which includes Indiana, attended a meeting of Hoosier Veneer Company employees to discuss a pending collective-bargaining agreement. During this meeting, Stringer, an employee of Hoosier and a rank-and-file union member, approached Gorman and Everett Doss, president of the local union, and said that employees of Central had indicated to him that they wished "to find out how to form themselves into a union." Gorman explained to Stringer that the employees would have to sign authorization cards and that a petition would have to be filed with the Board. Stringer then asked if Gorman had any such cards. The latter answered in the negative, but promised to send some when he returned to his office. At this point Doss said that he had some cards left over from another organizational campaign and gave them to Stringer. Gorman agreed to file a petition with the Board if signed membership cards were sent to him.

Neither Gorman nor Doss informed Stringer that he was to obtain the cards and take them to or sign up Central's employees; neither gave him instructions as to what he was to say to employees; neither told him that he was a representative of the Respondent; neither promised him any reward for obtaining signed cards. Gorman did tell Stringer that when the cards were signed they were to be turned over to Doss who would send them to Gorman.

Stringer obtained most of the signatures on the membership cards signed by employees of Central. He gave the cards to Doss who sent them to Gorman. The latter filed a representation petition with the Board together with 22 signed membership cards.

The burden of proof was on the General Counsel to prove the existence of the agency relationship between the Respondent and Stringer.² Agency is a contractual relationship, deriving from the mutual consent of principal and agent that the agent shall act for the principal.³ In the present case, the evidence falls short of establishing that, by words or conduct, the Respondent and Stringer intended to create an agency relationship. Stringer was a rank-and-file union member. So far as appears, he had never held any union office and had never engaged in an organizational campaign. He sought organizational information from Gorman about another shop at the request of Central's employees. Gorman gave him that information. However, Gorman did not instruct him that he was to organize such employees. "At that

² *International Longshoremen's and Warehousemen's Union, O.I.O. (Sunset Line and Twine Company)*, 79 NLRB 1487, 1508.

³ *Ibid* "An agency relation exists only if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act." Restatement, Agency (2d) § 15 (1958).

time," according to Gorman, he "had no indication that Stringer would get the cards signed or would have anything to do with signing the cards. . . ." The Respondent did not furnish Stringer with any propaganda material. No representative of the Respondent participated with Stringer in obtaining signed membership cards from Central's employees, nor engaged in conduct vis-a-vis Central's employees which could lead them to believe that Stringer was acting as agent of the Respondent.⁴ Neither did Gorman's conduct in accepting the signed membership cards and filing them together with a representation petition constitute ratification of Stringer's conduct. "Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him."⁵ The mere clerical act of filing the representation petition together with the authorization cards cannot be considered affirmance of Stringer's conduct so as to constitute legal ratification thereof.

I would therefore dismiss the complaint on the ground that the General Counsel failed to establish that Stringer was an agent of the Respondent.

CHAIRMAN McCULLOCH and **MEMBER BROWN** took no part in the consideration of the above Decision and Order.

⁴ The General Counsel relies principally on *The Eclipse Lumber Company, Inc.*, 95 NLRB 464 472 to support his contention that Stringer was an agent of the Respondent Union. In *Eclipse*, the Board held that a union was responsible for the conduct of a union member who, while canvassing delinquent members to collect back dues, said that failure to pay such dues would lead to their discharge under a union-security contract, where the alleged agent had been furnished by the union with a list of delinquent members and was authorized to collect the back dues, had formerly been a full-time paid special organizer for the union, and his threats followed the pattern of similar threats by the union's secretary-treasurer and business agent. The Board concluded from these facts that the alleged agent had apparent authority to represent the union and that the employees had reasonable cause to believe that the collector had the authority to represent the union in this matter. In the present case, there is no such holding out of Stringer by the Respondent Union. There is therefore no adequate basis for finding agency responsibility on the theory of apparent authority.

⁵ Restatement, Agency (2d) § 82 (1958).

INTERMEDIATE REPORT AND RECOMMENDATIONS

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner in Indianapolis, Indiana, on June 27, 1960, and October 31, 1960. The issues litigated were whether William J. Stringer was an agent of International Woodworkers of America, AFL-CIO, sometimes referred to herein as IWA or as Respondent, at the times that said Stringer engaged in certain conduct specified and complained of in the complaint in this matter and whether Respondent by virtue of Stringer's conduct violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, herein called the Act or the Statute. The General Counsel and the Respondent filed well-prepared briefs which the Trial Examiner considered in preparing this Report.

Upon the entire record and observations of witnesses, the Trial Examiner makes the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS INVOLVED

Central Veneer, Incorporated, an Indiana corporation with its place of business in Indianapolis, Indiana, engages in the manufacture, sale, and distribution of wood veneer and related products. In the course and conduct of its business Central Veneer, Incorporated, ships annually from its Indianapolis, Indiana, plant products valued in excess of \$50,000 to points located outside the State of Indiana.

Central Veneer, Incorporated, at all times material hereto, has been, and is now, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Woodworkers of America, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS AND CONCLUSIONS CONCERNING THE ISSUES IN DISPUTE

On March 18, 1960, employees of the Hoosier Veneer Company of Indianapolis, Indiana, held a union meeting to discuss a proposed collective-bargaining agreement between their employer and one of the locals of the International Woodworkers of America, AFL-CIO (Local 5197). Among those participating in this meeting were Walter Gorman, a service representative of the International Union, Everett Doss, president of Local 5197, and William J. Stringer, an employee of Hoosier and a rank-and-file member of the Local.

Immediately after the meeting on the Hoosier contract, Gorman, Doss, and Stringer engaged in discussion concerning organization of employees of Central Veneer, Incorporated, also in Indianapolis. Prior to this discussion Stringer and his uncle, an employee of Central with whom Stringer lived, considered the advantages to Central's employees of representation through a union, and various persons attending meetings of Local 5197, including Stringer, considered organizing the unorganized concerns in the area, including Central. The upshot of these discussions was that Stringer on March 18, 1960, inquired of Gorman the appropriate procedure for organizing the employees of Central. The exact words used in this conversation were reported with some variation by the three participants (Gorman, Doss, and Stringer) but the gist of the conversation was as follows: After the meeting of the Local had ended and while Hoosier's employees were standing around talking, Stringer inquired of Gorman the procedure for organizing the employees of Central and was told (by Gorman) that the usual procedure was for employees to sign authorization cards and then using these cards to obtain a National Labor Relations Board election. Gorman indicated further that if the employees of Central signed authorization cards and the cards were turned over to him, he would initiate the Board proceeding but that he did not have blank cards with him. At that point Doss, who was standing close by, offered to bring some cards to work the following Monday to give to Stringer, which he did. As this meeting ended the three participants (Gorman, Doss, and Stringer) had an understanding that Doss would supply Stringer with blank authorization cards which Stringer would return to Doss when executed, that Doss would send the signed cards to Gorman who would then file a petition for certification of representatives and submit the cards to the National Labor Relations Board. This procedure was followed. See Case No. 25-RC-1821.

After getting the cards from Doss, Stringer approached the employees of Central and sought their signatures upon the cards. In his efforts to obtain signatures, Stringer was aided by one other person selected by him. These were the only people who solicited signatures from employees of Central. Respondent did not give Stringer instructions or otherwise aid him in his efforts among employees of Central, except as previously noted, and Stringer was not paid or reimbursed for his efforts. He did not have a button, card, or pin designating him as a representative of the IWA and he was never expressly made such a representative. Stringer took complete charge of the efforts to obtain signatures and acted in his own uncontrolled discretion. Except for the conversation of March 18, 1960 (noted above), and the fact that the procedure followed coincided with the procedure established, Respondent was not aware of Stringer's activity among Central's employees and it was not aware that Stringer had engaged in the conduct which constitutes the basis for this case until the opening of the hearing herein on June 27, 1960.

On substantially the same facts as those noted above, the Trial Examiner at the conclusion of the General Counsel's case-in-chief (that portion of the General

Counsel's case dealing with this issue—no evidence bearing upon the merits had been received at this point), granted Respondent's motion to dismiss the complaint on the ground that the General Counsel had not made a *prima facie* showing that Stringer was an agent of International Woodworkers of America, AFL-CIO (Respondent herein). Thereafter, on July 20, 1960, the General Counsel filed a request for review of the dismissal and the Board, on September 14, 1960, granted said request and ordered "a further hearing . . . for the purpose of completing the trial of the issues involved in the proceeding." Further hearing, in accordance with the Board's order, was held on October 31, 1960, but, as inferred above; no facts substantially different from those already in the record concerning agency were adduced. In the light of the foregoing, especially the Board's action noted immediately above, the Trial Examiner rejects Respondent's contention that this case should be dismissed because of failure to establish agency.

As noted above, Stringer approached employees of Central and sought their signatures upon IWA authorization cards. He obtained 18 or 19 signatures and it is alleged that in two instances he exceeded the permissible and engaged in conduct giving rise to the unfair labor practice allegations involved herein.

Among the employees with whom Stringer discussed union membership were William Hicks and Wendell Lee Hicks, brothers who were production employees at Central. The two Hickses signed IWA cards on March 21 or 22, 1960.¹

William Hicks testified that Stringer approached him identifying himself as being "from [or with] the Woodworkers Union" and solicited his signature to the card and that he (William Hicks) then—

asked if Bill Lucas signed. He said, "No. Bill hadn't signed." I asked him what would happen if Bill didn't sign. He said, "If the Union got in he'd have to sign or get another job."

TRIAL EXAMINER: Was anything else said, do you remember?

The WITNESS: No, sir.

By Mr. FISHER:

Q. Do you recall anything else that was said?

A. No, sir.

After prodding by the General Counsel, William Hicks answered "yes" to the question, "Did Mr. Stringer say they'll [other employees of Central] have to find another job that they cannot work there with the Union there unless they belong?" Later in his testimony William Hicks testified Stringer told him "if the Union got in they'd [other employees of Central] have to either sign or get another job." Still later he testified Stringer said "if the Union gets in the ones that don't sign now will have to sign them later or get another job."

Immediately following the aforementioned conversation and the signing of the card by William Hicks, he volunteered to drive Stringer to Wendell Lee Hicks' house. Stringer accepted the invitation. Upon arrival at Wendell Lee Hicks' house, William Hicks introduced Stringer as being with the "Woodworkers Union" and Stringer then successfully solicited Wendell Lee Hicks' signature. According to William Hicks, Stringer told his brother (Wendell) "you might as well sign now, you'll have to sign later or find another job." Although originally saying that Stringer did not tell his brother that other employees would either have to sign or get another job, William Hicks finally remembered that such a statement was made to his brother.

Wendell Hicks, during direct examination, testified:

Jackie [Stringer] showed me an application card for membership with the International Woodworkers of America and he said he had 17 or 18 men signed for the Union and that he only needed one over half to put the Union

¹The cards read as follows:

Application for membership in International Woodworkers of America, affiliated with the Congress of Industrial Organization and Canadian Congress of Labour.

Name (print).....	Book No.....
Home address.....	Date of Birth.....
Employed at.....	S.S. No.....
Starting date.....	Local No.....

I hereby request and accept membership in the International Woodworkers of America and of my own free will hereby authorize the IW of A to act for me as the collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment or other conditions of employment.

in and that he already had one over half of the employees signed. He said you might just as soon sign now because if the Union goes in, after the Union goes in, you'll have to sign or get another job.

On cross-examination Wendell Hicks testified that Stringer said, "You will have to sign now or sign later anyway because after the Union goes in there won't be any place for [you] if you don't sign" or words to that effect.

Stringer testified that when he approached Central's employees he identified himself as an employee of Hoosier and offered the employees the cards telling them that if they signed the cards they would be forwarded to the Respondent (Gorman, via Doss) who would in turn use them in seeking an election among Central's employees. He denied that he ever told anybody he was "a representative of the Woodworkers Union" or that he was "from the International Woodworkers Union." Stringer denied telling William Hicks that "if Bill Lucas didn't join the Union that when the Union came in he'd lose his job," denied telling William Hicks "anybody would lose their job when the union came in," denied telling William Hicks "he, William Hicks, would lose his job if the Union came in and he didn't sign a card," and denied saying anything to William Hicks whatsoever "about anybody losing his job if he didn't join up with the Union." Stringer denied telling Wendell Hicks that "he might as well sign or if he didn't when the Union came in he'd be out looking for another job," and denied telling Wendell Hicks that "he or anybody else would lose his job depending upon his union membership or non-membership."

The Trial Examiner has little or no doubt that Stringer by his actions, if indeed not by his words, gave an impression that he was organizing Central employees on behalf of the Respondent. While the matter is not free from doubt, the Trial Examiner also believes and finds that Stringer impressed upon the two Hickses that if they did not sign the cards their jobs were in jeopardy. In making these credible resolutions the Trial Examiner has considered the demeanor of the witnesses, their apparent ages and backgrounds, the printed record herein, likely probabilities, and the briefs filed in this matter.

Holding, as the Trial Examiner does, that Stringer was an agent of the Respondent and that while acting as such agent he engaged in conduct proscribed by the Act, a question arises as to whether in the instant matter it is appropriate to recommend dismissal of the complaint rather than issuance of the usual cease-and-desist order. Such issue arises because the conduct involved was by a minor official (an underling having limited authority—see *N.L.R.B. v. Whittier Mills Company, et al.*, 111 F. 2d 474, 479 (C.A. 5)), because only by inference can the conduct complained of be construed to be representative of Respondent's policy² and because the General Counsel's announced reason for processing this case (which the General Counsel described as involving "two incidents of isolated threats") is to protect the Board's election process, although the General Counsel "is not asking anything with regard to the RC" case. Under the circumstances mentioned above, the Trial Examiner believes and finds that the findings and conclusions made in this report concerning the disputed matters are adequate to accomplish the purposes of the Statute³ and that it is appropriate herein to recommend dismissal of the complaint. See *The Great Atlantic & Pacific Tea Company, Inc.*, 129 NLRB 757.

ULTIMATE FINDINGS AND CONCLUSIONS

In summary, the Trial Examiner finds and concludes:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.

2. International Woodworkers of America, AFL-CIO, is a labor organization within the meaning of the Act.

3. At the times material herein William J. Stringer was acting as an agent of International Woodworkers of America, AFL-CIO.

² Such inference arises from the acts themselves and from the fact that Respondent relied upon the cards to support its position in the RC case. However, such an inference is materially weakened in the light of the fact that Respondent was not aware of the proscribed conduct when it relied upon the cards.

³ Including the General Counsel's desire to protect the Board's election process. Presumably, the General Counsel will endeavor to bring the matters set forth in this report to the Board's attention in the RC case via an appropriate procedure in the RC proceeding. The absence of a cease-and-desist order will not materially lessen the weight which the Board might otherwise give to this report in an RC case.

4. The evidence adduced herein establishes that International Woodworkers of America, AFL-CIO, through its agent, William J. Stringer, violated Section 8(b) (1)(A) of the Act.

5. The incidents involved herein are not so convictive of a fixed determination on the part of Respondent to deprive employees of rights secured by the Act as to justify a belief that the Act's preventive purposes will or may be thwarted unless an order to cease and desist from such acts be recommended or issued.

[Recommendations omitted from publication.]

Lion Brand, Inc. and International Union of Electrical, Radio, and Machine Workers, District 3, AFL-CIO.¹ *Case No. 3-RC-2344. April 21, 1961*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John H. Galvin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Leedom, and Fanning].

Upon the entire record, the Board finds:

1. Recently, upon a stipulated settlement, the Board asserted jurisdiction over the Employer and entered a Decision and Order dated June 13, 1960, in Case No. 2-CA-6768, *L. & B. Products Corp., Lion Brand, Inc.* (not published in NLRB volumes). In the absence of any change in the Employer's operation since that time, we find that the Employer is engaged in commerce within the meaning of the Act.³

2. The labor organizations named below claim to represent certain employees of the Employer.⁴

¹The name of the Petitioner appears as corrected at the hearing.

²The Intervenor and counsel for L. & B. Products contended at the hearing that the hearing officer erred in granting the motion to amend the petition to reflect a change in the name of the Employer from L. & B. Products to Lion Brand, Inc., for the reason that Lion Brand, Inc., is a different corporation which did not receive notice of these proceedings. The face of the petition clearly indicates in all other respects that Lion Brand, Inc., is the Employer herein. For example, as described in the petition, the employees involved and the plant identified could only be those of Lion Brand, Inc., at the Stottville location. The record shows that Joseph Zelinger, the general manager of Lion Brand, Inc., at its Stottville plant, received a copy of the petition and notice of these representation proceedings. Moreover, there appears to be a close relationship of management and business interests between the two corporations. After the amendment to the petition, counsel who had appeared for L. & B. Products participated in the proceeding and made contentions with respect to the interests of Lion Brand, Inc. Under these circumstances, Lion Brand, Inc., cannot properly plead surprise, and the amendment of the petition with respect to the Employer's name was, as we find, merely the correction of a formal defect in the petition and was not prejudicial to the Employer. Accordingly, the motion to dismiss the petition is denied.

³*Avco Manufacturing Corporation, Appliance and Electronics Division*, 107 NLRB 295.

⁴Stottville Independent Union, Inc., intervened on a basis of its contractual interest in the employees.