

very often these things result in strikes, with lost time, and sometimes all the other dastardly things that go with them. Think it over carefully.

Do you want to erase from your future the surprise and happiness at seeing a bulletin announcing some new plan.

The average rate paid today in our plant not including any overtime is considerably over the national average for durable good industries and more over those of this vicinity.

You men are in a select group as far as shop workmen in this vicinity are concerned as you know as well as we that there is hardly a shop man in Green Bay and vicinity but who wants to work at Northwest Engineering Co. You know why.

Under a union collective bargaining starts fresh. What might that mean.

How much do the unions think of their own employees. Here is one instance reported by a weekly Labor Review which says 15 employees of two Paducah, Kentucky A F of L Unions picketed the Union offices and the union told them to accept what the union offered, get back to work, or be fired.

The question to be answered is, do you want to give up the continuation of harmonious relations, as represented by the last 40 years for the possibility of continuous bickering and troublesome strikes that may bring extreme disaster on your home and family. You know these things have happened.

Don't be fooled by some promises expressed by the outsiders before the election.

We ask you to be honest to yourselves and the management of this company and vote for your best interest. Look around the country and see how many men lose their earnings for considerable time, that they cannot ever get back, because some small number of disgruntled employees are trying to gain something they are not in fairness entitled to.

The management has great respect for you men.

May God give you the wisdom to decide in the best interest of yourselves and your families so as to avoid the possibility of you and your families being mixed up in some disturbances that will do no one any good

For your own protection, be sure to vote for no union.

United States Printing Ink Corporation and Local 575, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case No. 22-CA-1714. September 21, 1964

DECISION AND ORDER

On April 29, 1964, Trial Examiner John H. Eadie issued his Decision 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 attached Trial Examiner's Decision. He further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed a brief in answer to the General Counsel's cross-exceptions.

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

148 NLRB No. 120.

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 Decision and the entire record in this case, including the exceptions, cross-exceptions, and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts, as its Order, the Order recommended by the Trial Examiner, and orders that the Respondent, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on September 23, 1963, the General Counsel of the National Labor Relations Board issued a complaint dated October 18, 1963, against United States Printing Ink Corporation, herein called the Respondent, alleging that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. The Respondent filed an answer in which it denied the commission of any unfair labor practices.

A hearing was held before Trial Examiner John H. Eadie at Newark, New Jersey, from November 26 through December 4, 1963, inclusive. At the conclusion of the General Counsel's case the Respondent made separate motions to dismiss various allegations of the complaint. The motion to dismiss the allegation of the complaint to the effect that Ronald Baker was a supervisory employee within the meaning of the Act was granted. Ruling was reserved on all other motions to dismiss. The Respondent's motions to dismiss are disposed of as hereinafter indicated. At the close of the Respondent's case, the General Counsel moved to strike paragraphs 3 and 4 of the Respondent's answer. Ruling was reserved. The motion is hereby granted. After the conclusion of the hearing, the General Counsel and the Respondent filed briefs with the Trial Examiner.

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

FINDINGS OF FACT¹

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New Jersey corporation. It has a plant located at Little Ferry, New Jersey, where it is engaged in the manufacture, sale, and distribution of printing inks.

During the period of 12 months preceding the date of the complaint herein, the Respondent caused to be manufactured, sold, and distributed at said plant products valued in excess of \$1,000,000, of which products valued in excess of \$500,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New Jersey.

It is found that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

¹ Much of the evidence in this case is not relevant or material to the issues framed by the pleadings. Such evidence was admitted, for the most part, for reasons of credibility. All of this evidence has been considered, but is not set forth in the findings of fact hereinafter made. The facts which are related and found are based either upon documentary evidence or upon credited portions of the testimony of witnesses on behalf of the General Counsel and of the Respondent. Contrary testimony to these findings is not credited.

II. THE LABOR ORGANIZATION INVOLVED

Local 575, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events*

Sometime during July 1963, the Union's president, Robert Noble, received information to the effect that the Respondent's employees were interested in joining the Union, and that John Young, a driver of the Respondent, could be contacted at the Times Building in New York City where he made deliveries. About the middle of July, Noble met Young at the Times Building, discussed with him organization of the Respondent's employees, and gave him a number of the Union's designation cards and his own business card. About the end of August Noble's business card came into the possession of employee Nelson Davison. About the same time Davison and three other employees presented a paper, to which they signed their names, to Rogers, a foreman. The paper requested "a \$10 raise."

On September 3, 1963, Noble received the following letter from Davison:

The employees of the United States Printing Ink Corp., Little Ferry, New Jersey, have delegated me to contact you in regard to joining your union.

I would appreciate if you could contact me, *at my home*, after five PM, at your earliest convenience.

The employees are very anxious to set up a meeting with you in regard to enrolling in your union—and would like to do so as soon as possible.

Every employee is 100% behind this effort to organize a union within our plant.

As a result of the above letter, Frank Carracino and Edward Pecora, the Union's business representative and secretary-treasurer, respectively, went to Davison's home on the night of September 3. They discussed organization of the employees with Davison and gave him a supply of the Union's designation cards. It was arranged that a meeting of the employees would be held on Saturday afternoon, September 7, at Little Ferry, New Jersey.

At the times mentioned herein the Respondent had 22 production and maintenance employees.² Davison solicited these employees to sign union designation cards during working hours on September 4 and 5. Fourteen employees signed cards on September 4, four signed on September 5, and one on September 7. Davison did not solicit any "laboratory" or other employees of the Respondent.

About 10 a.m. on September 5, Irwin Brooks, vice president of the Respondent, called a meeting of employees at which he announced \$5 or \$10 pay raises for 21 of the 22 production and maintenance employees. Either that same day or on the following day the Respondent posted a notice showing the respective pay raises received by the 21 employees involved.

The Union held a meeting for the employees on Saturday, September 7, as scheduled. It was attended by about 15 employees. At the meeting Davison gave Carracino the 19 union designation cards which had been signed by the employees. Before the meeting started Davison told Pecora that employee Ronald Lengen was a "stool pigeon" as he had "squealed to the boss and the boss knows what's going on." Pecora told him not to worry about it as he would take care of the matter during the meeting. Pecora addressed the employees. He told them that on the following Monday the Union would file a petition for an election with the Board and would also send the Respondent a telegram informing it of the Union's majority status and requesting recognition for the purposes of collective bargaining. At sometime during the meeting Pecora mentioned that there might be some "Uncle Toms" among the colored employees in the plant and said, "They might on purpose sell the rest of you down the drain."³ He also referred to the fact that both Brooks and Seixas were "Jewish," and stated, "Oh, I dealt with these Jew-boys before. We know how to handle these Jew-boys." One of the employees voiced concern about the possibility of discharge when the Respondent learned of the union activity. Pecora explained that the Union either could call a strike or file an unfair labor practice charge and that the latter action "would definitely hold up the election." Young stated that the employees

² This number includes drivers.

³ About four colored employees were present at the meeting.

should give the Respondent "a chance" to see if it would recognize the Union before they took any action. One of the employees made a motion to give the Union authority to take any necessary action in order to protect the employees if the Respondent engaged in discrimination. The employees voted on the motion and it was passed unanimously.

On September 9 Noble filed a representation petition with the Board. The unit described therein included "laboratory employees." About 10:30 a.m. Noble also sent the following telegram to the Respondent:

GENTLEMEN PLEASE BE ADVISED A MAJORITY OF EMPLOYEES OF UNITED STATES PRINTING INK CORP HAVE DESIGNATED TEAMSTERS LOCAL 575 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS AS THE EXCLUSIVE REPRESENTATIVE FOR ALL SUCH EMPLOYEES FOR THE PURPOSE OF COLLECTIVE BARGAINING IN RESPECT TO PAY WAGES HOURS OF EMPLOYMENT AND OTHER CONDITIONS OF EMPLOYMENT.

During the morning on September 9 Donald Seixas, president of the Respondent, met with the production and maintenance employees and the truckdrivers. Brooks also was present. Seixas told the employees that he was "very surprised" that "everyone" was for the Union, and asked them to explain why they had "brought this union in." Davison replied that the employees were "unhappy" over certain conditions in the plant, such as wages and overtime pay; and that they felt that "the union would get us more than we were getting out of the Company." Seixas said that he "would have liked to have worked everything out without this union coming into the picture"; that he did not understand why the employees had contacted "the Teamsters' Union of all unions"; and that if the employees desired it, he would contact "the AF of L-CIO" in order to organize a union in the plant.

About noon that same day Noble had a telephonic conversation with Seixas. He told Seixas that he represented the employees and asked him if he would recognize the Union as the bargaining agent. Seixas answered that he would not recognize the Union. When Noble mentioned that the Union had the right to strike the plant, Seixas replied, "I don't give a darn what you do." He admitted that he had received the Union's telegram.

About 11 a.m. on September 10 Noble again spoke to Seixas. He asked Seixas to reconsider his refusal to recognize the Union. Seixas again refused and stated that he wanted to confer with his attorney.

During the afternoon of September 10, Sanford Markham, the Respondent's attorney, met with the production and maintenance employees and the truckdrivers. He explained the election procedure of the Board and the law involved. He stated that "some unions were good" and "other unions were bad"; and that some local unions were only interested in the money they could get out of the employees. He told the employees that in his opinion it would be to their "advantage" if they could "work out" their problems "with the Company."

After Markham's speech Young obtained permission from Seixas to hold a meeting on the Respondent's premises during working hours. All of the production and maintenance employees and truckdrivers attended. Young stated that he had had "a change of heart," that he wanted to give the Company a chance as it had always been honest with him, and that he believed that "everything could be worked out with the Company." At Young's suggestion, the employees voted on the question of whether or not they still wanted the Union, by marking pieces of paper and putting them in a locked suggestion box. It was agreed that employee Hobart Page was to open the box and count the ballots.⁴ Seixas was present during part of the meeting.

During the morning of September 11 Pecora called Markham. He told Markham that a majority of the Respondent's employees had signed union cards and asked him to get his client to recognize the Union. Markham replied that he had just been retained on the case and had not had a sufficient opportunity to talk over the matter with Seixas. He suggested that they could discuss the question of recognition when they met for the representation matter.⁵ Pecora mentioned that he had heard that Markham had met with the employees, and asked him to afford the Union "equal time" for such a meeting at the Respondent's plant. Pecora stated that both Brooks and Seixas also had talked to the employees and that he

⁴ Davison testified that the following morning Page told him that he had opened the box but had destroyed the ballots "because they weren't interested in the voting"

⁵ A conference of the parties was scheduled to be held at the Board's office in Newark on September 13.

thought he was "entitled to two hours." Markham agreed to let the Union meet at the plant with the employees but not for that length of time. Later that same day Markham called Pecora. He stated that he had just received a copy of the Union's representation petition and that he noticed that "laboratory employees" were included in the unit. Pecora answered that the inclusion of such employees was a mistake and asked Markham to advise him as to what should be done to correct it. Markham told him to call the Board agent in charge of the case and to request him to amend the petition. Pecora agreed to do this and told Markham that he would call him back. When Pecora called the Board agent, he was advised not to worry about it as he could amend the petition to exclude laboratory employees when he came to the Board's office on September 13 for the representation case conference. Pecora called Markham and informed him of his conversation with the Board agent. He again asked Markham to get his client to recognize the Union. Markham replied, "... I'll see you at the hearing. I'll be there a little early and we will discuss it. I just can't talk to Mr. Seixas about that now."

After the three meetings held for the employees in the plant on September 9 and 10, described above, the employees discussed among themselves the benefits that might be gained with or without the Union. As a result of these conversations, Davison and Lengen decided that it would be "a good idea" if they could learn what benefits the Respondent would offer them without the Union. On or about September 11 they went to Seixas' office with a written list of benefits desired by the employees. This list included such items as automatic pay raises, work clothes, work shoes, paid holidays, sick leave, and overtime pay after 8 hours of work. Davison and Lengen asked Seixas for the Respondent's position on each item. Seixas answered each question to the effect that "at this time" because of the Union he could make "no promises," that he "honestly" believed that "everything could be worked out" between the employees and the Respondent, and that "there would be no problem with these things." Following this meeting, Davison spoke to some of the employees. He told them that Seixas had stated that he could make no promises because of the Union as it would be "illegal," but that Seixas also stated that he "honestly believed that perhaps everything could be worked out between the men and the company." Davison also told them, "Every man has to make up his own mind either to believe in our president or hold on to the promise of the union."

On Friday, September 13, Pecora met Markham and Seixas at the Board's office in Newark prior to the scheduled conference in the representation case. Pecora asked them to recognize the Union. Markham refused the request. The conference was terminated when Pecora filed an unfair labor practice charge against the Respondent.⁶

After the above meeting Pecora sent the following letter, dated September 13, 1963, to each of the employees:

Fortunately for the human race there is such a thing as man made laws. I think an explanation is due you and this letter will give you the absolute truth.

Approximately four months ago Johnny Young contacted a driver from Elizabeth I.P.I. Printing Ink. He told this driver he was fed up. He was there five years and the pushing around the employees were getting is brutal, and he wanted Teamsters there. He stated he was employed there five years and received \$115.00 per week for 55 hours. Also, a new driver was hired for \$105.00 per week while he only received \$115.00 after working there for five years. That is why Johnny wanted the Union in there. Furthermore, Johnny doesn't like to go on the road anymore.

Johnny Young signed a card at that time, which is $4\frac{1}{2}$ months prior to our calling a meeting of the employees.

Johnny met Bob Noble at 5:00 o'clock in the morning. He told him he has to go to Cincinnati but he will have someone sign up the employees for us, with the result all employees signed up. Johnny was very interested in the employees at that time. As a matter of fact, when I spoke to him over the phone his attitude toward the company was bitter. His language was abusive with continual reference to Mr. Brooks as "Brooksie" and "Babbling Brooks."

⁶ Seixas testified at length concerning conversations with Pecora at the Board's office. He testified that at the conclusion of the conference he called the plant and spoke to Brooks, telling him to inform the employees of his conversations with Pecora and that "there would be no election for a while"

Then I met Johnny at a general meeting last Saturday. As usual, he had a glass in his hand and told me in front of our delegate, Frank, that he hated Bill and Mr. Seixes, and that Mr. Brooks promised him Bill's job. Then he turned around at that meeting and as you can recall, he blasted the company because he had to work with a broken arm.

Now we find Johnny selling the employees down the river for a promise of a better job. Also, I am sure you are aware he is walking around spouting lies so you can be bought off by the company. Any statement that Bob Noble makes Johnny runs into the plant and twists those word.

Another driver was heard to say he saw a business agent accept money from an employer. That is another lie and if that driver says he saw this happen, then he should go to the F.B.I. immediately and put in a complaint. We would like to add if that employee continues to make these false remarks, he is open to a criminal libel suit and can go to jail for lying.

Your employees have been brainwashed by a Judas, who is primarily concerned in receiving a position as foreman when you move to E. Rutherford, New Jersey. Johnny doesn't seem to understand that his job is not secure as the company cannot trust him any more because he, and he alone, has brought Teamsters into that plant. We are positively sure he is not capable of becoming a foreman for the reason which will be stated in due time.

Johnny, you have committed an unpardonable sin and you are repeating an incident of 1,963 years ago of a person who received 30 pieces of silver.

So, my dear fellow members, we are exercising our rights granted us under the law of the United States Government and as of this date we have filed Unfair Practice Charges against your company for attempting to influence your vote by dazzling your judgment by offering you a few dollars increase. We know the workers will not accept a few crumbs when they can get the whole loaf.

Johnny will not have to go on the road for a while as he will be allowed to walk around and convince you to sell your soul to the company . . . but John, it will be no use as the employees know that Local 575 Teamsters will positively guarantee another \$10.00 raise to everybody and they will vote for a Union because they know without a Union they have no protection or security.

We will keep you fully informed as to all future activities and rest assured all of you are still members of Local 575 Teamsters.

We will be around your plant to continue talking to you.

WE HAVE NOT ABANDONED YOU!

P.S. The Government will conduct a secret Ballot Election in the very near future.

As scheduled, Pecora and Carracino held a meeting for the employees on Saturday, September 14, at about 1 p.m. Only four employees, one of whom was Davison, attended. One employee complained because he thought that Pecora's letter of September 13 referred to him. Pecora assured him that it did not. Another employee stated that fear of losing the recent wage increase "swayed a lot of the employees away from the Union."

At sometime shortly after September 13, Pecora sent the employees a leaflet together with a copy, with certain omissions, of the unfair labor practice charge which had been filed with the Board on September 13.⁷ The leaflet reads as follows:

On Friday, September 13, 1963, Mr. Cefelli, a Board Agent, conducted an informal hearing at the National Labor Relations Board. The company was represented at this hearing by your employer, and his attorney, Mr. Sandford Markham.

Edward Pecora, Secretary-Treasurer of Local 575 Teamsters represented the Teamsters. Edward Pecora filed unfair Labor Practice Charges against the company on the basis that your employer interfered with your right to organize, as guaranteed by Section 7 of the Act. (See attached copy.)

The only time a pay increase was mentioned was when your boss said he gave all employees a \$10.00 per week raise, which is a lie. Your boss used the phone at 4:45 P.M. Mr. Pecora received a number of phone calls at his home that evening from employees, telling him that your boss called up someone at the Plant and said that we filed unfair Labor Practice Charges because he gave everybody a \$10.00 raise, and that the Union will make him take it back. (This is another lie.) Neither the Union, the boss or the Government can take that \$10.00 away from you.

⁷ The original charge listed "granting of wage increases" as one of the alleged unfair labor practices. This was omitted from the copy sent to the employees by Pecora.

Your boss *did* discriminate against some of your fellow employees. It shows that he doesn't believe in treating all employees equally. Why? Doesn't food, clothing and shelter cost the same for all families? However, we will see that all employees who did not receive equal money will get what they are entitled to, regardless of their job classification. This will include all drivers. Your boss will not continue to pay \$120.00 for a 40 hour work week unless he is required to so by a Union contract because without a Union he can hire new drivers for as little as \$2.00 per hour.

We will also see that the employees who got \$10.00 will receive another \$10.00, plus the other benefits they are entitled to.

Again your boss is violating the law when he permits Mr. Baker from the laboratory to attempt to brainwash you. Mr. Baker can be assured that the employees want the same as Interchemical, Sun Chemical and other chemical companies but most of all they want a contract with the Teamsters so that their increases cannot be taken away from them, plus the security that a Teamster contract offers.

They also want increases *every year* as is prevalent in the ink industry. The employees want the company to build Plants in Cincinnati, Chicago, Los Angeles, Richmond and East Rutherford, N.J., **BUT NOT WITH THEIR MONEY.**

A government Agent will interview you. Tell the truth because your job is protected by the Government.

UNITED STATES PRINTING TEAMSTERS ORGANIZING COMMITTEE

On or about September 17 Noble called the Respondent's plant and, as Seixas was absent, spoke to Brooks. He asked Brooks if the Respondent would recognize the Union as the bargaining agent. Brooks replied, "Definitely not," as the Respondent's position had not changed to his knowledge. On September 19 Pecora spoke to Markham. Pecora again requested that the Respondent recognize the Union. Markham refused, saying that his client did not want the Union in the plant and would not recognize it.

On September 23, 1963, the Union withdrew the unfair labor practice charge that it had filed with the Board on September 13.⁸ On the same date it filed the charge in the instant proceeding.

On September 25 the Board received a petition signed by 22 employees. The petition stated, "We request an immediate election to decide if we want the union or do not want the union."

On or about September 26 Noble had a conversation with Seixas. He asked Seixas to recognize the Union. Seixas refused and stated that he and the employees did not want the Union.

The employees filed another petition with the Board on or about September 30. The petition, dated September 27, 1963, was signed by 21 employees, and a copy was sent to the Union. It reads:

The following employees of United States Printing Ink Corp. do not wish to belong to Local 575 of the International Brotherhood of Teamsters. We also cancel any authority we gave to this Union by signing [sic] cards.

A letter dated October 11, 1963, and signed by 18 employees was sent to the Union and the Board. It reads as follows:

We, the employees of United States Printing Ink Corporation, request the cards that we had signed with Local 575 be returned to us; and we would like a reply by Thursday, October 17, 1963.

The following letter, dated October 17, 1963, and signed by 17 employees, was sent to the Board:

We, the undersigned employees of United States Printing Ink Corporation, are not satisfied with the answer to our previous petition as explained in Mr. Cuneo's letter of October 16th. We wish to state at this time that the company was not the cause of our changing our minds about joining the Teamsters Union. The real reason we changed our minds was because of the things that the Union said and did. Under no circumstances will we accept Local 575 of the Teamsters Union as our representative. Should representation by this Union be ordered by the N.L.R.B., we will not pay dues to this Union or will we cooperate with them in any way. We again request the return of our cards.

⁸ Case No. 22-CA-1707.

On October 18 the Union made a request to withdraw its petition in the representation case.⁹ The Regional Director approved the request on the same date.

B. Concluding findings

The complaint alleges alternative units, one of which includes laboratory employees, to be appropriate for the purposes of collective bargaining. In its telegram of September 9 the Union notified the Respondent that "a majority of employees" had designated it to represent them. In the petition filed by the Union on the same date the described unit included, "All production and maintenance employees including drivers, receiving, shipping, production and laboratory employees." The Union did not attempt to organize nor did it obtain signed designation cards from any laboratory employees. That the Respondent knew which employees were involved is indicated by the fact that only production and maintenance employees and truckdrivers were asked to attend the meetings held at the plant on September 9 and 10. But even if there had been any doubt on the unit question, this was dissipated by Pecora during his conversation with Markham on September 11.

Since there were only five laboratory employees, the evidence discloses that the Union on September 5 represented a majority of the employees in either unit found to be appropriate. The record also shows that there were a number of defections from the Union thereafter. The General Counsel contends that the granting of the wage increases on September 5 and the Respondent's conduct starting on September 9 were designed to undermine the Union's majority. The Respondent contends that the Union's conduct, particularly Pecora's statements at the union meeting held on September 7 and his letter of September 13 to the employees, caused the defections from the Union.

There is evidence that the employees had requested wage increases prior to the start of the organizational campaign. Davison testified to the effect that he did not openly solicit the employees to sign the union cards. There is no direct evidence in the case to show that on or before September 5 the Respondent had knowledge of the employees' union activity. Therefore, I do not find that the granting of the wage increases was violative of the Act.

I agree, however, with the General Counsel's contention with respect to the Respondent's conduct on and after September 9. In his talk to the employees on September 9 Seixas made it clear that he did not like the Union; that if they had to have a union, he would prefer some other union; and that "everything" could have been worked out between the employees and the Respondent without a union. It is true that he did not make any direct promise to Davison and Lengen when he met with them later during the week. However, on each benefit that they brought up for discussion, he answered, in substance, that he could make no promises to them at the time because of the Union, but that he "honestly" believed that everything could be worked out between the employees and the Respondent and that there would be no problem on any of the items. That Davison and Lengen saw the light is clear from Davison's report to other employees when he told them that the time had come when every employee had to "make up his mind either to believe in our President or to hold on to the promises of the Union." Accordingly, I find that by such statements Seixas indirectly promised benefits to the employees if they would forgo the Union.

Pecora's statements at the meeting of September 7 were ill-advised to say the least. However, contrary to the testimony of the Respondent's witnesses,¹⁰ from the evidence as a whole I do not believe that Pecora's remarks caused any defections from the Union's ranks. The evidence concerning the events which took place at the plant during the week starting September 9 certainly does not show that the employees had decided to renounce the Union. When Seixas spoke to them on September 9 and asked them to explain why they had brought the Union into the plant, it does not appear that any employee repudiated it at that time. Instead they complained about their working conditions. Davison, without any employee voicing an objection, stated that the employees believed that "the union would get more than we were getting out of the company." From Seixas' own testimony it appears that after his speech the employees were in constant discussion with him and with each other on the question of the best economic benefits to be obtained, with or without the Union. His testimony does not show that the employees were

⁹ Case No 22-RC-2209.

¹⁰ The Respondent called seven employees who testified to the effect that after hearing Pecora's remarks they decided that they did not want the Union. I do not credit their testimony in this connection.

disgruntled because of Pecora's remarks or because of any other conduct of the Union. For all of the above reasons I am convinced and find that the defections from the Union were caused by the Respondent's illegal conduct.

It is undisputed that on and after September 9 the Respondent refused the Union's requests for recognition as the employees' bargaining agent. The evidence shows that on September 9 the Respondent knew that the Union represented a majority of the production and maintenance employees. During his talk on that date Seixas told the employees that he had learned that "everyone" was for the Union. Further, the Respondent at no time asked the Union to prove its majority. Other than in the conversations between Pecora and Markham on September 11, the Respondent did not raise any question concerning the appropriate unit. When Pecora made it clear that the Union did not wish to have the laboratory employees included, Markham did not contend otherwise. Accordingly, I find that the Respondent's refusal on and after September 11, 1963,¹¹ to recognize and bargain with the Union was violative of Section 8(a)(5) and (1) of the Act.

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 Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act, I will recommend that Respondent be ordered to bargain with the Union, upon request, as the exclusive representative of all its employees in the appropriate unit concerning rates of pay, wages, hours, and other terms and conditions of employment, and, if understandings are reached, embody such understandings in a signed agreement.

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. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. All production and maintenance employees of the Respondent employed at its Little Ferry plant, but excluding all office clerical employees, laboratory employees, professional employees, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
3. The Union has been at all times on and after September 5, 1963, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
4. By refusing at all times on and after September 11, 1963, to recognize and bargain collectively with the Union as the exclusive representative of its employees in the aforesaid appropriate unit, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
5. 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 unfair labor practices within the meaning of Section 8(a)(1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, United States Printing Ink Corporation, its officers, agents, successors, and assigns, shall:

¹¹ Since the appropriate unit hereinafter found excludes laboratory employees, no violation of Section 8(a)(5) is found prior to the above date. As stated above, the Union represented a majority in either unit.

1. Cease and desist from:

(a) Refusing to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment with the Union as the exclusive representative of its employees in the appropriate unit found above.

(b) Promising economic benefits to its employees if they abandon the Union, or any other labor organization of its employees.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the 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, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request bargain collectively with the Union as the exclusive representative of the employees in the above-described appropriate unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understandings reached.

(b) Post at its plant in Little Ferry, New Jersey, copies of the attached notice marked "Appendix."¹² Copies of said notice, to be furnished by the Regional Director for Region 22, shall, after being duly signed by the Respondent or its authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 22, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith.¹³

¹² If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order"

¹³ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 22, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the 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, as amended, we hereby notify our employees that:

WE WILL NOT promise our employees economic benefits if they abandon Local 575, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization of our employees.

WE WILL, upon request, bargain collectively with the above-named labor organization as the exclusive bargaining representative of all employees in the following unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if understandings are reached, embody such understandings in a signed agreement. The bargaining unit is:

All production and maintenance employees of the Respondent employed at its Little Ferry plant, but excluding all office clerical employees, laboratory employees, professional employees, guards, and all supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor orga-

nizations, to join or assist the above Union, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

UNITED STATES PRINTING INK CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151, if they have any questions concerning this notice or compliance with its provisions.

Armco Steel Corporation and United Steelworkers of America, AFL-CIO and Armco Employees Independent Federation, Inc., Party to the Contract. Case No. 9-CA-2818. September 21, 1964

DECISION AND ORDER

On March 6, 1964, Trial Examiner Thomas N. Kessel issued his Decision 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 his attached Decision. Thereafter, the General Counsel and the Respondent¹ filed exceptions to the Decision and supporting briefs and the Respondent filed an answering brief.

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 Fanning, Brown, and Jenkins].

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 Decision,

¹ On June 25, 1964, the Respondent moved to dismiss the complaint herein on the ground that a decision issued by the U.S. District Court for the Southern District of Ohio on June 12, 1964, which denied the Board's petition for a temporary injunction against the Respondent rendered the subject matter of the present complaint, *res judicata*. The General Counsel filed a statement in opposition to the motion.

Under our Act the Board is empowered to make the initial determinations as to whether violations of the Act have occurred. Secondly, the injunction proceedings are interlocutory in nature and a decision thereon does not constitute a binding decision on the merits. Accordingly, the motion to dismiss is denied.