

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

## V. THE REMEDY

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

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

## CONCLUSIONS OF LAW

1. Automatic Sealing Service, Inc., and the employer-members of Printers League Section, Printing Industries of Metropolitan New York, Inc., are engaged in industries affecting commerce within the meaning of Section 8(b)(4)(ii)(B) of the Act.

2. New York Paper Cutters' & Bookbinders' Local Union No. 119, International Brotherhood of Bookbinders, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening, coercing, and restraining employer-members of the Printers League Section, Printing Industries of Metropolitan New York, Inc., with an object of forcing or requiring them to cease doing business with Automatic Sealing Service, Inc., Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(b)(4)(ii)(B) and 2(6) and (7) of the Act.

4. By inducing and encouraging employees of employer-members of Printers League Section, Printing Industries of Metropolitan New York, Inc., to engage in strikes or refusals in the course of their employment to perform services with the object of forcing such employer-members to cease doing business with Automatic Sealing Services, Inc., the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

5. 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 omitted from publication.]

**Packaging Corporation of America (Denver Carton Plant) and  
Richard D. Gabrys.** *Case No. 27-CA-1562. September 28, 1964*

## DECISION AND ORDER

On July 9, 1964, Trial Examiner William E. Spencer issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.

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

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 Trial Examiner's Decision, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the exception noted below.<sup>1</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that the Respondent, Packaging Corporation of America (Denver Carton Plant), its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following additions and modifications:

1. Substitute for paragraph 1(a) and 1(b), the following:

"(a) Threatening to deprive and depriving its employees of employment benefits in reprisal for their engaging in protected concerted activities for the purpose of their mutual aid or protection.

"(b) In any like or related manner interfering with, restraining, or coercing its employees in their right to engage in self-organization, to form, join, or assist labor organizations, 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 amended."

2. Substitute the attached Appendix for the Trial Examiner's recommended notice.

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<sup>1</sup>In view of the fact that the refusal to entertain a grievance was not alleged as a violation in the complaint, and because it is not necessary to reach that issue to fashion an order adequate to remedy the unfair labor practices clearly committed, we do not adopt any part of the Trial Examiner's discussion of that issue, nor his findings, conclusions, or recommendations with respect thereto.

### APPENDIX

#### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT threaten to deprive or deprive our employees of employment benefits because of their engaging in protected concerted activities for the purpose of their mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self organization, to form, join, or assist labor organizations, 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 of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act, as amended.

PACKAGING CORPORATION OF AMERICA,  
*Employer.*

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 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, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, 80202, Telephone No. 297-3551, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION  
STATEMENT OF THE CASE

The General Counsel's complaint, dated April 3, 1964, based on a charge filed by an individual on February 27, 1964, alleged in substance that the Respondent threatened to deprive, and deprived, its employees of certain employment benefits in reprisal for certain of them having engaged in concerted activities for the purpose of their mutual aid and/or protection, and thereby violated Section 8(a)(1) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act. The Respondent in its duly filed answer denied having engaged in the alleged unfair labor practices. A hearing before Trial Examiner William E. Spencer, with all parties participating, was held at Denver, Colorado, on May 21, 1964.

Upon consideration of the entire record in the case, from my observation of the witnesses, and consideration of the brief filed with me by the Respondent, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Delaware corporation, is engaged in the business of manufacturing cardboard containers, and maintains a place of business and plant in Denver, Colorado. During a representative 12-month period, it manufactured, sold, and shipped from its Denver plant finished products valued in excess of \$50,000 to States other than Colorado.

II. THE UNFAIR LABOR PRACTICES

A. *The situation*

At times material herein the Respondent had a bargaining agreement with a labor organization covering its production employees. Not covered in this agreement was Respondent's practice throughout 1963 of deducting from the wages of all its employees a contribution to the United Fund. On about December 29, 1963, a group of 13 out of a total of some 60 employees signed papers amounting to a petition stating that they wanted the deductions from their wages for the United Fund discontinued. This petition they gave to their union representative, Heberling, who, in turn, presented it to management.

On January 2, 1964, E. W. Peiker, Respondent's general manager, called a meeting of factory employees in the plant and addressed them concerning the petition and other matters. According to Richard D. Gabrys, the General Counsel's principal witness and one of the 13 employees signing the petition, Peiker strode in front of the employees, pacing quite hurriedly; asked if they had enjoyed their vacation and said that he had not enjoyed his because of his receipt of the petition; said that the company had always operated on an informal basis, that he considered the matter of contributions to the United Fund an individual matter, and that employees could discuss their contribution with him on an individual basis; tore up the 2 sheets of paper containing the 13 signatures and threw them at his feet; said that the action of the 13 employees in signing the petition, "have resulted in some of your privileges being denied you in the future"; and then stated that toilet privileges would be in order only during the 10-minute break mornings and afternoons, and that employees could no longer use the lunchroom for smoking between the break periods. Gabrys testified, and it was generally admitted, that prior to January 2, employees had been extended toilet and smoking privileges outside the break periods. Subsequent to that date employees confined their smoking to the break periods but, as Gabrys admitted, they continued to have access to the toilets according to their requirements. According to Gabrys, Peiker concluded his remarks by saying, "I think all of you know who they are"—referring to the 13 who signed the petition—and, "If you don't like it, you can just get the hell out."

Peiker admitted that he told the employees that he had not enjoyed his vacation because of the petition; that he regarded the matter of United Fund contributions an individual matter and employees could make appointments individually to discuss the matter with him; that he saw "no purpose" in the petition and did not "recognize it as any petition"; that he tore up the sheets of paper on which the 13 signatures appeared and threw them upon the floor; that he discussed what he regarded an abuse of smoking and toilet privileges; stated that these privileges would be restricted to break periods in the future; and that, "If there are some of you here who don't like it, all right, that is your privilege, but, by God, if it continues, there's going to be some new faces." He denied that his announcement of restrictions on toilet and smoking privileges was connected in any way with the United Fund petition. He testified, and was corroborated in this by W. G. Williams, Respondent's production manager, that the latter on learning that he was to address the employees on January 2, suggested that inasmuch as he was having this meeting he should utilize the occasion for reprimanding employees for their abuse of toilet and smoking privileges, and advise them that in the future the rules on break periods would be strictly enforced.

Several employees called as witnesses for the Respondent, some of whom signed the United Fund petition, testified in effect that Peiker did not link the restriction on toilet and smoking privileges with the petition, did not single out or refer to the petition as the reason for the new restriction, and made no threats with respect to it.

### B. *Conclusions*

There can be no doubt that collective presentation of a grievance, not in conflict with an existing bargaining contract, is protected concerted activity within the meaning of the Act. The protected right to present such a grievance would be an empty thing if the protection began and ended with the presentation. Implicit is the duty of management to receive and to give reasonable consideration to such a grievance. Peiker obviously felt affronted that a group of his employees would address him as a group rather than individually, and through the formality of a petition, in the matter of the mandatory contribution to the United Fund. His action in rebuking the 13 employees who signed the petition and in tearing it up and throwing it on the floor, accompanied by his fiat that they should see him individually or not at all in such matters, was in and of itself coercive and an unlawful interference with their right to act jointly in matters affecting the conditions of their employment not covered by the collective agreement. The fact that Peiker, when he addressed the employees on January 2, was totally uninformed of the protection afforded concerted activity by the Act and was therefore innocent of intent or purpose to violate a law—he testified to that effect and I credit this—does not of course relieve the Respondent of its responsibility for his action. I find, therefore, without looking further, that the Respondent, by its refusal to entertain the collective grievance presented to it by 13 of its employees, its precipitate, angry, and contemptuous rejection of it, and admonition that it would consider such a matter only when approached by its employees individually, engaged in conduct violative of Section 8(a)(1) of the Act.

I further find that Peiker's announcement of new restrictions on toilet and smoking privileges afforded Respondent's employees, following immediately after his con-

temptuous rejection of the petition, was intended to have and had the reasonable effect of impressing on these employees that they could not engage in collective activity of a like nature with impunity but, on the contrary, would be met with reprisals. It matters not that the curtailment of toilet and smoking privileges was to correct what the Respondent may well have considered violations of its rules in the matter, and that such restrictions and curtailments were managerial prerogatives: the fact remains that over a substantial period of time the employees had enjoyed, without hindrance, a wide latitude in such matters, and were now told, in an angry and preemptory manner, that this must stop, or they would face discharge. Assuming that Peiker did not say explicitly that this curtailment of erstwhile privileges resulted from the action of the 13 employees in filing their grievance—though Gabrys, a generally credible witness, testified he did—the timing of the announcement, its enmeshment with Peiker's angry rejection of the grievance, and the vehemence of Peiker's announcement, would have about the same effect as such an explicit statement, and I do not think that the juxtaposition of the two matters was accidental.<sup>1</sup> The fact that employees summoned to the witness stand by the Respondent testified that they did not regard Peiker's announcement as a reprisal for the concerted activity of the 13 in presenting their petition, does not alter or modify this conclusion, such testimony on subjective states of mind experienced in a time past being valueless in assessing the true significance of the statements made and the action taken. Accordingly, it is found that the Respondent by juxtaposing its announcement of restrictions on privileges previously enjoyed by its employees with its rejection of the collective grievance of 13 of its employees, with the intent, purpose, and effect of coercing them in the exercise of their right to present grievances and to engage in collective activity within the meaning of the Act, violated Section 8(a)(1) of the Act.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II above, occurring in connection with the operations of the Respondent described in section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### IV. THE REMEDY

Having found that the Respondent engaged in conduct violative of Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and post notices designed to effectuate the purposes and policies of the Act. While it is true that Respondent's violations embrace only the one occasion and in that sense are "isolated," there being no general pattern of violations or a tendency to engage in violation of the Act, the matter of employees' right to engage in concerted activity for their mutual aid and/or protection is too basic in the general design of the Act, and the violations here registered are too grave, to render the imposition of such a remedy as is here proposed needless and purposeless. On the contrary, it is necessary to dissipate the effects of the unfair labor practices and to prevent future abuses of a like nature.

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 Respondent, Packaging Corporation of America, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By rejecting consideration of a grievance filed with it jointly by certain of its employees, warning them that it would consider such matters only if presented individually, and announcing a restriction of certain privileges of employment previously enjoyed by its employees, with the intent, purpose, and effect of coercing its employees in the exercise of their right to engage in concerted activities for the purpose of their mutual aid and/or protection, the Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act.

<sup>1</sup> Contrary to Respondent's argument in its brief, this has nothing to do with Respondent's undoubted right to make and enforce nondiscriminatory rules governing the conduct of its employees; it has to do with Respondent's utilization of such managerial prerogatives for unlawful ends.

3. 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 pursuant to Section 10(c) of the Act, it is recommended that Packaging Corporation of America, its officers, agents, successors and assigns, shall:

1. Cease and desist from:  
 (a) Refusing to consider a grievance not in conflict with an existing bargaining agreement, filed with it as a result of collective action by its employees, or some of them; restricting the filing of such grievance to individuals; utilizing the restriction of privileges of employment enjoyed by its employees in retaliation for the filing of collective grievances, and/or to discourage such activities.

(b) In any like or related manner interfering with, restraining or coercing its employees in their right to present grievances not in conflict with an existing bargaining agreement, or to engage in other concerted activities for the purpose of their mutual aid and/or protection.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its Denver, Colorado, place of business, copies of the notice marked "Appendix." [Board's Appendix substituted for Trial Examiner's Appendix.]<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for Region 27, Denver, Colorado, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 27, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>3</sup>

<sup>2</sup>In the event that this Recommended Order be 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. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>3</sup>In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

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**Struksnes Construction Co., Inc. and International Union of Operating Engineers, Local No. 49, AFL-CIO. Case No. 18-CA-1696. September 28, 1964**

### DECISION AND ORDER

On March 10, 1964, Trial Examiner Phil W. Saunders 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. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief and the Charging Party filed a brief in support of the Trial Examiner's Decision.