

American Printing Company *and* International Pressmen and Assistants Union of North America, AFL-CIO. Case 28-CA-1644

October 2, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

On July 9, 1968, Trial Examiner Howard Myers issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof.

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

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 entire record in this case, including the Trial Examiner's Decision, the exceptions, and the brief, 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 Recommended Order of the Trial Examiner, and orders that the complaint herein be, and it hereby is, dismissed in its entirety.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HOWARD MYERS, Trial Examiner This proceeding, with all parties represented, came on to be heard at Phoenix, Arizona, on May 6, 7, and 8, 1968, upon a complaint, dated February 28, 1968, issued by the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel¹ and the Board, through the Regional Director for Region 28 (Albuquerque, New Mexico), and the answer of American

Printing Company, herein called Respondent, duly filed on March 11, 1968.

The complaint, based upon a charge duly filed by International Pressmen and Assistants Union of North America, AFL-CIO, herein called the Union, on January 19, 1968, alleged that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended from time to time, herein called the Act.²

Upon the entire record in the case³ and from my observation of the witnesses, I make the following.

FINDINGS OF FACT

I RESPONDENT'S BUSINESS OPERATIONS

Respondent, an Arizona corporation, at all material times has maintained and now maintains, its principal offices and plant at Phoenix, Arizona, where it is engaged in newspaper publication and the printing business.

During the 12-month period immediately preceding the issuance of the complaint herein, Respondent, in the conduct of its newspaper publication, held membership in and/or subscribed to interstate news services, published nationally syndicated features, and advertised nationally sold products. During said 12-month period, Respondent's gross revenues exceeded \$200,000 and its out-of-State purchases of materials and products used in the course and conduct of its business amounted to \$50,000 in value.

Upon the basis of the above undisputed facts, I find, in line with established Board authority, that Respondent is, and at all times material was, engaged in commerce or in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act and that its business operations meet the standards fixed by the Board for the assertion of jurisdiction.

¹ This term specifically includes counsel for the General Counsel appearing at the hearing.

² As to the unfair labor practices, the complaint, as amended at the hearing, alleged, in substance, that Respondent (1) violated Section 8(a)(1) of the Act when (a) on or about January 15, 1968, and thereafter, through certain named supervisors, by means of certain stated acts and conduct interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, (b) on or about January 15, 1968, it demoted press foreman William Penrod to a more onerous, less desirable, and more difficult job because Penrod had testified and had given testimony adverse to Respondent, on or about January 10, 1968, in a Board hearing in Case 28-CA-1565 and (c) on or about January 15, 1968, it constructively discharged Penrod because he testified in the aforementioned Board hearing, and (2) violated Section 8(a)(5) by (a) refusing, since January 15, 1968, to bargain with the Union, the statutory collective-bargaining representative of Respondent's employees in the unit found appropriate in Case 28-RC-1686, although requested to do so by the Union, and (b) attempting to induce the unit employees to bargain directly with it concerning rates of pay, wages, hours of employment and other terms and conditions of employment.

³ The briefs filed by the General Counsel and by Respondent (in letter form) on June 3, 1968, have been carefully considered.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

III THE ALLEGED UNFAIR LABOR PRACTICES

A *The Alleged Discrimination Against William Penrod*

Penrod first started to work for Respondent about mid-August 1963, as a pressman. About 6 months later he was made an assistant to the pressroom foreman and "within the following year" he was appointed pressroom foreman.⁴

From about May 24 or 25 to about June 8, 9, or 10, 1967, Penrod was absent from the plant on vacation. Upon his return to the plant, on or about June 10, Penrod heard some pressmen under his supervision discussing the advisability of having a union represent them. In fact, some of said men asked him how he "felt" about having a union in the plant. After advising the men that he had belonged to the Pressmen Union, the Charging Party herein, when he had been employed some years ago in Marion, Indiana, suggested that the Respondent's pressmen not be too hasty about bringing a union in the plant, and then suggested they meet at his home to discuss the matter, adding, "There will be no union representation there, we will just talk all over the place before a cup of coffee and we can't have everybody wanting a different wage or something like that . . . we will just draw up what . . . we feel is fair for the people and the company and work from there."

Penrod, at some undisclosed date, but, in any event, prior to the men meeting at his home, which meeting is discussed immediately below, told Evan Mecham,⁵ Respondent's president, "There had been some union talk among the men, that it wasn't very strong yet. . . that [he] knew that just two or three of the people has had coffee with a union member." When Mecham inquired whether employee Kautnik was the instigator of the union movement and also asked what labor organization was involved, Penrod replied he did not know who started the union movement, but the labor organization involved was the Pressmen Union of which he was a member.

In June or July, a meeting of Respondent's pressmen, and, perhaps, some of their coworkers, met at Penrod's home and, without any labor organization representative being present, drew up and addressed an undated letter to the National Labor Relations Board, Evan Mecham, Mr. Brown (Respondent's then general manager), and William Penrod containing proposed increased wage scales and revised working conditions for Respondent's pressmen, cameramen, and mailroom employees.⁶

The letter, referred to immediately above, requesting that the proposed changes go into effect July 26, 1967, signed by Penrod and 12 other Respondent employees, was delivered by Penrod to Edward Brown, Respondent's then general manager who, after reading it hurriedly, remarked, "the company would need about ten days to think this over, to come up with some kind of agreement."

When management failed to meet with its employees or to reply to the above-referred-to undated letter, as Brown had promised it would do, the employees "got their cards to authorize an election." At about the time the employees "got their cards," Penrod informed Brown, "the Union talk is very strong now . . . if it comes to a vote, it would be 97 per cent" in favor of union representation.

Pursuant to a petition filed by the Union with the Board (Case 28-RC-1686) seeking to be certified as the statutory collective-bargaining representative of Respondent's employees in a certain claimed appropriate unit, an election was held on or about November 8, 1967, under the auspices of the Regional Director for Region 28, which election the Union won. On or about November 22, 1967, the Board certified the Union as the statutory collective-bargaining representative of Respondent's pressmen, platemakers, cameramen, and strippers.

Mecham testified, and the undersigned finds, that Respondent's dissatisfaction⁷ with Penrod came to a head in the fall of 1967, when it became evident to him that Penrod "obviously was far more sympathetic with helping the causes of the employees than he was with the work of American Printing Company", that Penrod's sympathies in behalf of the rank-and-file employees became increasingly greater and his sympathies in behalf of management became increasingly less as time went on, that throughout the fall months, he came to the conclusion that as soon as he could find a suitable pressroom foreman he would relieve Penrod of that job, and that when Ronald Boyles applied for a job in the latter part of December, he hired him to replace Penrod.

That Respondent had lost its confidence in Penrod's qualifications as part of management and had expressed its dissatisfaction prior to the hiring of Boyles is amply illustrated by the following testimony of Penrod on direct examination by the General Counsel:

Q. Between the time of your original employment and the 15th of January of 1968, that was the day before you left your employment, were you ever criticized? Were you ever criticized by Mr. Mecham about the quality of your work?

A. Well, on different occasions there might be something as far as color or maybe an ink color wasn't up bright enough or out of compensation or things of this sort, pertaining to the press and we may have had words to that effect.

Q. Did he ever criticize you for not being loyal to management?

A. No, not until—

Q. Before the 15th of January, I am sorry.

A. The only time that I ever had any talk concerning management or what not, would be I believe, the Friday before Christmas, 1967. We were standing in the hall between the pressroom and the front office and Mr. Mecham said that my attitude had changed around there, and I told him that my attitude had changed, that he had changed also, and that I also told him that my attitude has changed but it hasn't affected my work. I'm still putting the

⁴ As foreman, Penrod was a supervisor within the meaning of the Act.

⁵ Evan Mecham will be referred to herein as Mecham and his brother, Willard, will be referred to by his full name.

⁶ The appropriate unit found by the Board in Case 28-RC-1681 consisted of, "All pressmen, platemakers, cameramen and strippers . . ."

⁷ Mecham, as president and principal stockholder of Respondent was, in fact, its actual managing head.

newspaper out on schedule and as nearly right as can be with the condition of the press.

On December 28, 1967, Boyles went to Respondent's plant and applied for either a pressroom or a cameraroom job. He was first interviewed, as was Respondent's custom when a new applicant seeks a job such as Boyles then sought, by Willard Mecham, Respondent's secretary-treasurer. After a short discussion with Boyles regarding his previous employment and experience, Willard Mecham decided that Boyles' qualifications were such as to warrant being interviewed by his brother, Evan.⁸ Willard Mecham testified that he thought his brother would be interested in Boyles because in the various conversations he and his brother had had previously to Boyles' applying for a job, they "had concluded that it was imperative that we make some change in press foreman, we had to have somebody that was looking out for the interests of our company."

After talking with Boyles for a considerable length of time and going into great detail regarding Boyles' background, places where he had worked, and especially what his duties were at his then job in Gardena, California, Mecham came to the conclusion that Boyles was the person he wanted to replace Penrod and so told Boyles.

The December 28, 1967 decision to hire Boyles as Penrod's replacement was primarily based, as the credited evidence establishes, on the fact that Boyles (a) had been a pressroom foreman, (b) had experience as a cameraman, (c) had composing room experience, (d) had handled custom job printing work, (e) had engaged in public relations work for his then employer, (f) had experience as a business solicitor, on a percentage remuneration basis, in Southern California, where Mecham had been of late attempting to secure printing business for Respondent.

At the conclusion of the aforementioned Boyles-Mecham December 28 conversation, it was mutually agreed that Boyles would assume his pressroom foreman duties on or about January 15, 1968.

On January 9 and 10, 1968, a hearing was held in Phoenix, Arizona, in Case 28-CA-1568, before Trial Examiner Martin S. Bennett. Penrod testified in that hearing as a General Counsel witness and gave evidence adverse to his employer, the Respondent herein, and his testimony was in several instances in direct conflict with that of Mecham.

On January 10, 1968, Boyles and his family moved from Gardena, California, to Phoenix.

On January 15, Mecham called Penrod at his home and asked Penrod to come to his office directly upon reporting for work instead of proceeding to the pressroom. Upon reaching the plant at about 11:30 that morning, Penrod went directly to Mecham's office and was informed by Mecham that Boyles was reporting for work about 1 o'clock that afternoon, that Boyles was going to take over as pressroom foreman; that he would like Penrod to remain as pressman. Mecham, after saying that since Penrod would be a pressman, one of the pressmen then on the job would have to be laid off, asked who Penrod thought should be selected for layoff. Penrod replied, to quote from his testimony, "If anyone should go it should be me because I have more qualifications than some of the other men."⁹

Upon leaving Mecham's office, Penrod went into the

pressroom, told the pressmen that he had been replaced by Boyles. Although it was Penrod's intention, as expressed to Mecham during the conversation referred to immediately above, to remain until the Friday of that week, Penrod decided, and did, quit at the end of the workday of January 15.

Upon the entire record in the case, as epitomized above, I am convinced, and find, that the allegations of the complaint, as amended at the hearing, that Penrod was discriminatorily demoted and then constructively discharged on or about January 15, 1968, because he had testified in a hearing on unfair labor practices charges before the Board, in violation of Section 8(a)(1) of the Act are not supported by substantial evidence. Accordingly, I recommend that the allegations of the complaint, as amended, with respect to Penrod be dismissed. This finding becomes inescapable when consideration is given to the undenied and credited testimony of Willard Mecham, Evan Mecham, and Boyles that Boyles was hired as pressroom foreman on December 28, 1967, whereas Penrod did not testify in the Board hearing until about 2 weeks later. It is true, as the General Counsel has pointed out in his brief and at the hearing that Mecham had openly expressed his disapproval of Penrod's testifying against Respondent and that Mecham had stated to some of the employees that Penrod had lied at said proceeding, nonetheless, the fact remains that Penrod's replacement had been selected and hired about 2 weeks before Penrod testified before Trial Examiner Bennett.

In support of his contention that Mecham was not a credible witness, the General Counsel, in his brief and at the hearing, calls attention to the fact that Trial Examiner Bennett discredited Mecham's testimony and credited Penrod's testimony in certain instances where their testimony conflicted. Whatever may be said of that observation the fact remains—despite the ancient maxim *falsus in una, falsus in omnibus*, which maxim has been discarded long ago—I find Mecham's testimony in the instant proceeding to be substantially in accord with the facts.

B *The Alleged Refusal to Bargain Collectively With the Union*

As found above, the Union was certified by the Board (Case 28-RC-1686) as the collective-bargaining representative of all the employees in the appropriate unit on November 22, 1967.

About mid-December 1967, the Union forwarded to Respondent a proposed collective-bargaining agreement.

Under date of January 2, Mecham wrote the Union suggesting that a meeting be held on January 17, to discuss the Union's proposed contract.

On January 15, immediately after Penrod had informed the pressmen that he had been replaced as foreman, that he had been demoted to a pressman hence one of the pressmen had to be laid off, the pressmen and Penrod held a meeting at a nearby lunchroom where they drew up the following document which Penrod and the four pressmen present then and there signed.

Mr. Mecham,

We have agreed as a unit not to work tomorrow unless we can come to an agreement better than the one we are

⁸ Such procedure was customary at Respondent's plant, that is, if an applicant for a job in the printing end of the business made a favorable impression upon Willard Mecham he would take or send the applicant to his brother for further interview.

⁹ Apparently meaning that he could obtain another job easier than the other men.

now under.

We would all like \$3 50 per hour which will continue until our union contract is effective with no less than 40 hours per week

None of the presently employed shall be discharged or layed-off

Upon returning to the plant one of the pressmen handed the above quoted document to Boyles, who, in turn, immediately took it to Mecham

After Mecham had read the document, referred to immediately above, he went into the pressroom and, according to his credited testimony, the following transpired

Q. (By Mr. Alleyne)¹⁰ Mr. Mecham, you have testified that the paper which was handed to you by Mr. Boyles was, or contained proposed wages and hours of work by the employees Did you thereafter discuss wages and hours of work with the employees?

A. Yes, I did

Q. During that time did you make a counter proposal concerning hours and wages?

A. My proposal was that I couldn't meet their demands.

Q. And did you propose a demand which in your opinion you could meet?

A. We had conversations that went back and forth and—yes, I asked them to let's be a little more reasonable and work it out, that we could not meet those demands.

Q. Did you propose a reasonable demand?

A. Well, I thought it was reasonable.

Q. Well, first did you propose one? Did you propose a certain wage?

A. Not a specified program, I told them we could not meet those, I tried to draw them on, what they would stay for, I tried to keep them around

Q. Was any Union official present at that time?

A. No, there wasn't

It is thus clear that the foregoing is insufficient to support the allegation of the complaint, as amended, "Respondent has attempted to induce employees to, and has bargained directly with" the unit employees. Accordingly, I recommend that the above quoted allegation of the complaint, as amended, be dismissed.

Since no evidence was introduced with respect to the

allegation of the complaint, as amended, "On or about January 15, 1968, and at all times since, the Respondent has refused, and continues to refuse, to bargain and negotiate with the Union . . . although requested so to do by the Union . . .," I recommend that said allegation be dismissed.

*C. The Alleged Independent 8(a)(1)
Violation*

At the conclusion of the taking of the evidence, the General Counsel moved to further amend the complaint, to include the allegation, "On or about December 28, 1967, the Employer interrogated a prospective employee concerning his Union sympathies and Union membership." The motion was granted.

The only evidence to support this new allegation was the testimony elicited from Mecham and Boyles regarding what transpired at Boyles' employment interview on December 28. It is true that Mecham queried Boyles about his union affiliations and sympathies during said interview. It is equally true, however, that Mecham was interviewing Boyles as a possible supervisor and that Boyles was then and there hired as such. Under the circumstances, Mecham's questions were not violative of the Act Accordingly, I recommend that the allegations of the complaint, as amended, that Respondent unlawfully interrogated a prospective employee about his union sympathies and membership be dismissed.

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 Respondent is engaged in, and during all times material was engaged in, commerce or in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The allegations of the complaint, as amended, that Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the Act, have not been sustained by substantial evidence.

RECOMMENDED ORDER

It is recommended that the complaint, as amended, be dismissed in its entirety.

¹⁰ Counsel for the General Counsel