

In the Matter of THE A. S. ABELL COMPANY, A CORPORATION, and INTERNATIONAL PRINTING AND PRESSMEN'S UNION, BALTIMORE BRANCH, BALTIMORE WEB PRESSMEN'S UNION, No. 31

Case No. C-270.—Decided February 25, 1938

Newspaper Printing and Publishing Business—Interference, Restraint, or Coercion: expressed opposition to labor organization; threats of retaliatory action; disclosure of identity of union members, efforts to secure—*Company-Dominated Union:* domination and interference with formation of; support; soliciting membership in by supervisory employees; failure to bargain no mitigating circumstance—*Discrimination:* charges dismissed.

Mr. Jacob Blum and Mr. Charles Y. Latimer, for the Board.

Semmes, Bowen & Semmes, by Mr. William G. MacMillan, of Baltimore, Md., for the respondent.

Miss Ida Klaus, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by International Printing and Pressmen's Union, Baltimore Branch, Baltimore Web Pressmen's Union, No. 31, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint, dated September 2, 1937, against The A. S. Abell Company, Baltimore, Maryland, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices, the complaint alleged in substance (1) that the respondent, during May and June, 1937, through its officers, agents, and supervisory employees, questioned its pressroom employees regarding their membership in the Union and, by threats and acts of coercion, discouraged membership in the Union; and (2) that the respondent, during May and June, 1937, through its officers, agents, and employees, promoted and engaged in the forma-

tion of a union of its pressroom employees, dominated and interfered with its administration by encouraging attendance at a meeting of that union, and sponsored and promoted the circulation of a petition among its pressroom employees for the purpose of encouraging membership in that union.

The complaint and accompanying notice of hearing were duly served upon the respondent and upon the president of the Union. On September 9, 1937, the respondent filed an answer to the complaint and, stating that it was appearing specially and reserving all rights to move to dismiss the complaint on constitutional grounds, to question the validity of the Act, and to object to the jurisdiction of the Board, denied that it was engaged in interstate commerce and that it had committed the unfair labor practices alleged in the complaint, and moved for a dismissal of the complaint.

Pursuant to notice, a hearing was held in Baltimore, Maryland, on September 16 and 17, 1937, before Lawrence J. Kusters, the Trial Examiner duly designated by the Board. At the hearing, the Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

At the commencement and again at the close of the hearing the respondent moved to dismiss the complaint on the ground that its business and its relations with its pressroom employees are beyond the power of the Federal Government to regulate commerce and that application of the Act to it would be violative of the Constitutional guarantee of freedom of the press. At the conclusion of the Board's case, counsel for the Board moved to amend the pleadings to conform to the proof. The former motion was denied and the latter granted. These rulings are hereby affirmed. In view of the introduction of testimony by the Board, without objection by the respondent, with regard to unfair labor practices within the meaning of Section 8 (3) of the Act and in view of the introduction of answering testimony by the respondent, the granting of the motion to amend the pleadings to conform to the proof will, for the purposes of this case, be considered as amending the complaint by adding thereto such allegations of unfair labor practices within the meaning of Section 8 (3) of the Act as the Board attempted to prove at the hearing.

During the course of the hearing, the Trial Examiner refused to permit the introduction of evidence by the Board on the attitude of the respondent toward organization of the pressroom and its relations with the Union prior to the effective date of the Act. An exception was duly taken by counsel for the Board. We find that this evidence was properly offered and properly admissible; that the ruling thereon of the Trial Examiner was erroneous; but that the Board's case was not prejudiced by such exclusion. It is accordingly

not necessary to reopen the case. Other rulings were made by the Trial Examiner on motions and on objections to the admission of evidence during the course of the hearing. The Board has reviewed these rulings, finds that no prejudicial errors were committed, and hereby affirms them.

On October 22, 1937, the Trial Examiner filed his Intermediate Report, finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of the Act, and recommending that the Board issue a cease and desist order and require the respondent to take certain specified affirmative action. Exceptions to the Intermediate Report were thereafter filed by the respondent. Oral argument was held thereon before the Board on November 24, 1937. As set forth below, we find that the evidence supports the findings and conclusions of the Trial Examiner with regard to unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, but that there is an insufficiency of proof to support an allegation of unfair labor practices within the meaning of Section 8 (3) of the Act.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Maryland corporation with its principal office and place of business at Baltimore, Maryland, owns, prints, and publishes The Sun, a daily morning paper with a Sunday edition called The Sunday Sun, and The Evening Sun, a weekday evening paper. During the month of May 1937, the peak production month for the period from January to September, 1937, 9,643,300 papers consisting of 347,755,560 pages were printed in the respondent's plant at a total pay-roll cost of \$192,071.46 and by a total employment roll of 1,120 persons. This does not include colored portions of the Photogravure Section, the Comic Supplement, and the Magazine "This Week", features of the Sunday edition, which are printed in New York State and shipped to Baltimore as railway baggage or freight, pursuant to purchase arrangements with the respondent. The paid circulation for August 1937, totaled 147,842 for the morning papers, 151,067 for the evening papers, and 208,978 for the Sunday papers. Seven and seventy-five hundredths per cent of the morning papers, 1.7 per cent of the evening papers, and 7.4 per cent of the Sunday papers are shipped to destinations outside the State.

Widespread news-gathering, news-interchange, and news-distribution activities of the respondent, transcending the limits of the State of Maryland, are conducted through its branch offices in New York

City, Washington, D. C., and London, England, through its correspondents in the principal foreign news centers, through its exclusive right in the United States to all the special correspondence and other material published in the Manchester Guardian of England, and through its direct wire, wirephoto, and teletypewriter arrangements with The Associated Press, the North American Newspaper Alliance, the New York Herald-Tribune, and Consolidated News Features, Inc. The respondent's membership in The Associated Press, a New York corporation engaged in the collection and interchange of information and intelligence for publication in newspapers in the United States and foreign countries, entitles that association to the exclusive use for publication of all local news and of certain types of news dispatches published in the respondent's papers. The respondent is also a member of the Newspaper Publishers' Association, a nation-wide organization. Advertising, representing a large variety of business interests, is solicited in a majority of the States for publication in the respondent's papers.

The raw materials used in the publication of the respondent's papers, newsprint and news ink, are derived, predominantly, from sources outside the State: all newsprint, from Canada and New York; 78½ per cent of the news ink, from the District of Columbia and Pennsylvania. Machinery, supplies, repair and replacement parts are purchased within and without the State.

II. THE UNION

International Printing and Pressmen's Union, Baltimore Branch, Baltimore Web Pressmen's Union, No. 31, affiliated with the American Federation of Labor, is a labor organization. It admits to membership all pressroom employees working in the City of Baltimore.

III. THE UNFAIR LABOR PRACTICES

A. *Attitude of pressroom supervisors toward the Union*

In April 1937, and for three months thereafter, the Union conducted an active campaign to organize the employees in the respondent's pressroom. Circulars and handbills, addressed "To all Employees of the Sun Pressroom", dealing with working conditions in the respondent's pressroom, pointing out the advantages of unionization, and urging affiliation with the Union, implemented the campaign plan. That this drive was not intended to be kept from the respondent, is evident from the Union's claim that it sent some of its literature to the respondent's supervisors and from a visit of the Union's president and vice president to the home of the respondent's pressroom superintendent at the initiation of the organization.

drive, at which time the Union disclosed to the superintendent its plans to acquaint the members of the Sun pressroom with the disparity of working advantages in their pressroom and in those covered by union agreements.

The testimony reveals a contemporaneous launching of a counter drive on the part of the respondent, aimed at hardening the men to the Union's appeal for membership and at disheartening those who had been recruited. Several employees testified that Miller, superintendent of the pressroom, questioned them about their union affiliation after summoning them into his office or approaching them at the presses. The testimony of others is that Miller told them that the Union could not come into the pressroom because the Company would not stand for it; that "this place will never change"; that a man joining the Union would get practically no consideration; that the first of the year would see the end of union men in the pressroom; that, in view of the good working conditions in the Sun pressroom, he could not see what would prompt a man to join the Union. One witness stated that Miller assured him: "If you will stick with us, you will get a pressman's job and have it as long as you want". A dark picture of what would happen if the Union were successful in its drive was drawn for several floormen, who were told that union classification would result in their being made paperhandlers at a reduction in pay. The testimony of another pressroom employee is that he had overheard Miller informing a group of men, predominantly nonunion, that he did not care if 80 per cent of the men joined the Union; they were not going any place and he "didn't give a damn" who knew it. It is significant to note that some of these remarks were made to men who had sought to clear up with Miller rumors that they had become union members.

Miller's technique with men who were known to have joined was varied. In some cases an appeal was made to conscience and self-respect: one man was advised that he wasn't considering his family and another was asked, "What would the old man think of you?" Others were reminded that it was not too late to reconsider, and one of those so reminded was transferred to a better job pending reconsideration. An attempt was made to discredit a worker's description of working conditions in a union pressroom in which he had worked during a lay-off. A union officer was characterized by Miller as "sweaty and dirty". One of the first union recruits testified that Miller had upbraided him from time to time for past mistakes in his work; had warned him he would be fired for the next error he made; and had ordered him to refrain from "handing the fellows a lot of talk about union" either inside or outside the plant because "this talk keeps the men from doing their own work". A union member who had complained to Miller about a change in shift was told that

he could quit if he didn't like it and that Miller intended to fire five or six of "you men" for the slightest reason, in which case all they could do would be to complain to the Labor Board, where they would have "a hell of a time proving that there wasn't enough reason".

In defense, Miller testified that he had questioned the men about the Union, not upon instruction from his superiors, but because he wanted to get an idea as to how the men felt; that he had no intention of firing anybody. His curiosity, he said, would express itself along these lines: "How do you feel about the Union? Do you feel like you want to join the Union? Do you think it will be any good to you? Do you think it will be any benefit to you?" He stated further that he was friendly with some of the men; that they would go out together and talk about their families; that he supposed they would discuss things as friends; but that he couldn't remember whether or not he had told one of the men two days before the hearing that he wasn't considering his family. With regard to the fate of floormen if the Union came in, he remarked that he must have a poor memory, for he did not remember having made such statement. However, the fact that this statement was repeated by five witnesses markedly weakens Miller's defense in this connection. As for the other statements alleged to have been made by him, Miller testified that he could not remember; that he wasn't sure. We conclude that Miller did not clear himself of the charges made against him.

Not only Miller, but also Preis, night foreman, had questioned the men about their union affiliation and about payment of dues, and had announced that the Union would never come in because the Company would never recognize it. One of the men working as a roller washer, a position superior to that of pressman, testified that Preis had told him, in the presence of a group of nonunion men, that he was broke because he had paid his dues; that he was merely a pressman, according to his union-card designation; and that, before the Union took over the plant, the witness "would have a beard a foot long". Preis testified that he did not think he had ever had any conversation with any of the men about union membership; that he had merely joshed and "kidded" the witness about being broke after paying his dues. We do not consider Preis' denial adequate; nor do we regard his statement as sufficient justification for remarks reasonably interpreted as serious by the person to whom they were addressed.

The respondent, in its defense, placed heavy reliance on the claim that the policy of The A. S. Abell Company had always been one of neutrality toward the question of unionization; that no discharges had occurred for union activity; that increases in wages had been granted without discrimination during the period of the

Union's campaign; and that, in spite of the alleged threats and anti-union statements, some of the men had joined the Union. The respondent's policy must be judged in this case, if we are to administer the Act properly, not by broad professions of general principle, but by the specific acts of its supervisors. The increase in wages, upon the admission of the respondent's executive vice president, was granted in pursuance of a policy to meet increases in union shops, and is subject to the inference that such policy was motivated by a desire to forestall the Union. That some men joined the Union after the alleged threats merely indicates the extent to which they clung to the rights guaranteed to them under the Act, but does not lessen the culpability of the respondent's attempt to interfere with the exercise of those rights.

We find, on the basis of the foregoing analysis of the record, that the respondent has interfered with, restrained, and coerced its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

B. The pressroom committee

Within a month after the initiation of the Union's membership campaign, a movement was started in the pressroom to organize a committee of pressroom employees for the alleged purpose of dealing with the respondent in respect to working conditions. During the month of May the following petition was circulated among the pressroom employees on the night and day shifts and was signed by 72 of the employees:

We, the undersigned wish to go on record as stating that we are entirely satisfied with our present working conditions. Further, when ever necessary, we will form a committee from our department to represent us in any matters pertaining to our own as well as The A. S. Abell Company's welfare and well being. Further, that this committee shall represent us in any matters pertaining to our salaries or working conditions. Further, we pledge our self to abide by the ruling of the committee, and that we do not wish to join any union or association other than the aforementioned committee formed from the Employees from our department. Further, we wish to ask that the business office of the A. S. Abell Company to recognize no other committee other than the above-mentioned one which we intend to form.

The petition was prepared, with the aid of a law student, by Le Faivre, an employee on the night shift who had worked in the

pressroom for nine years. While Le Faivre testified on direct examination that he had assumed the initiative in drafting the petition because the Union "had bothered the men quite a bit" in his department and many of them "were up in arms about it", he admitted on cross-examination that that had been the attitude of only 15 men, all on the night shift, and that he had made no attempt to ascertain the sentiment of the men on the day shift, who constituted about two-thirds of the total pressroom employees. Other significant facts disclosed by the record are that Le Faivre's father-in-law was superintendent of the respondent's composing room; that Le Faivre had had conversations with Miller about the Union's campaign; that he was at Miller's house when two Union officers called on Miller, by appointment, during the early days of the Union's drive for the purpose of apprising Miller of their campaign plans; and that he participated in the discussion between these officers and Miller.

The record reveals the following testimony, tending very strongly to connect Miller with the initial steps in the movement to establish the pressroom committee. According to the testimony of the two Union officers who had visited Miller at the start of the Union's campaign, Miller advised them during that visit that it would be useless for the Union to conduct a membership drive, since he had 80 per cent of the men pledged to him. The fact that 72 men out of a total somewhat in excess of 80 subsequently signed the petition lends credence to the testimony of the Union officers and compels us to give little weight to Miller's statement that he could not recall having made that remark. Three of the men testified that they had signed the petition in Miller's office and that pressmen did not as a rule have free access to that office. One of the men who signed testified that Miller had said to him, "Lou, I see you signed that paper . . . Lou, I think you did the right thing. They have only eight men in the Union and I can name them." Whereupon, he named them. We cannot consider Miller's testimony that he could not remember this remark because he had had "so many conversations with a good many of the men" as a denial of the substance of this particular conversation.

On Friday, June 2, when 72 signatures had been affixed to the petition, a committee of four, including Le Faivre and accompanied by Miller, went to see Schmick, executive vice president of the respondent, pursuant to an appointment made for them by Miller at Le Faivre's request. The petition was presented to Schmick with a request that he give it consideration and that he recognize a committee to be chosen pursuant to the petition as an agency for collective bargaining. Schmick testified that he said very little to the men at that time and gave them no encouragement; that he just thanked them and dismissed them with the comment that "it was nice to get the petition and it showed a spirit of loyalty".

One of the four men who presented the petition to Schmick was House, who had also aided in its circulation. The virtually undisputed testimony of two men who worked with House is that he acted as foreman on Tuesday nights when the regular foreman was off. House's time card showed that he had received extra pay each week. We conclude that House was a part-time supervisor.

On Sunday, June 6, a business meeting of those who had signed the petition was held at the house of Krausch, another of the four men who had presented the petition to Schmick. The men discussed the petition in a general way and elected officers to constitute the committee provided for in the petition. Groves and Johancen, two of the men who had aided in the circulation of the petition, attended this meeting; participated in the discussion; and were nominated, but defeated, for office. Five of the men in the pressroom who worked with Groves and Johancen stated that these two men were considered bosses, "sort of assistant foremen"; that, unlike ordinary pressmen, they were not assigned to any particular press; that they marked up the counters on the presses and gave orders to the men in the pressroom. The Union's president testified that men performing similar functions in union pressrooms were classified as assistant foremen but did not typically receive a higher rate of pay than ordinary pressmen. Supervisory officials of the respondent considered them ordinary pressmen because of their rate of pay, their pay-roll classification, and the disparity of privilege, in some respects, between them and the foremen. We conclude that Groves and Johancen acted in a quasi-supervisory capacity.

Upon the conclusion of the business meeting of June 6, the men held a beer party and card game which Miller and O'Connor attended by invitation of Krausch, the host. While the evidence shows that neither of these supervisory officers was present at the business meeting immediately preceding the party, Miller testified that he knew, before he arrived, that there was to be a business meeting "about forming an organization" and O'Connor stated that he had received similar information from his son, an employee in the pressroom who had also aided in circulating the petition.

While a committee had been elected at the meeting of June 6, Le Faivre testified that its purpose was not collective bargaining. "It was just a committee". There had been no attempts at collective bargaining and none of the petitions had, as far as Le Faivre knew, presented grievances to the committee. Schmick testified that he had not been approached by the committee for collective bargaining. There is also evidence that no further meetings were held by the pressroom employees and that no action had been taken to

organize the committee on a permanent basis. According to Le Faivre, after the meeting of June, "there wasn't anything else to do. It was all over".

We conclude, on the basis of the testimony herein outlined, that the supervisory officials of the respondent sponsored the movement to establish a pressroom committee and fostered the development of that movement. The failure of the respondent to bargain collectively or to negotiate toward that end with the committee and the general supineness of the committee do not mitigate the respondent's culpability. We interpret these circumstances as a measure of the extent of the respondent's interference and as manifestations of an underlying intention on the part of the respondent to accord to its men the aspect, but not the substance, of the freedom guaranteed to them by the Act.

We therefore find that the respondent interfered with the administration of the pressroom committee and contributed support to it.

C. Discrimination against union employees

John Hopkins. John Hopkins, an oiler, employed by the respondent for 17 years, joined the Union on June 2, 1937. On August 21, he was made floorman for a day to aid in the printing of a Sunday edition. Hopkins had done this type of work only once before. It required the moving of heavy rolls of paper and the lifting of heavy spindles, in addition to other tasks. Hopkins' complaint is that he was not given the usual assistance; that the foreman forbade volunteers to aid him; and that, as a result of this strenuous activity, he became ill with "stokers' cramps" and was out for a day. After that day, he went back to his old job and remained at it. He believed the experience of August 21 was visited upon him for his union membership.

The record affords insufficient basis upon which to sustain the charge that Hopkins was discriminated against because of membership in the Union.

Thomas Thamert. Thomas Thamert, an oiler employed by the respondent for eight years, joined the Union on June 8, 1937. He believed that Preis, the night foreman, knew of his membership in the Union because he had, on one occasion, asked Thamert what dues he had paid in the Union and Thamert had told him the amount. Thereafter on two occasions, Preis had given Thamert stumps, short rolls of paper, to work on and had so accelerated the speed of the presses that Thamert was not ready with additional rolls at the proper time. One night in July, Preis again gave him stumps and accelerated the speed of the press by standing at it and

pushing the button. Thamert testified that, while he was prepared for Preis this time, it required hard work to keep up with the pace set by his foreman. He stated that, while the other press was also working with stumps, it was operating at a normal rate and that there was no need for running his press "at that dead speed", since the run was small and there was no time pressure. According to Thamert's testimony, one of the nonunion men who had observed this incident said to Thamert concerning Foreman Preis, "He is just starting to work on you."

While we believe Thamert's membership in the Union may have been responsible for the treatment of which he complained, we consider that treatment to constitute discrimination of so minor a nature as not to warrant a finding that the respondent discriminated, within the meaning of the Act, in regard to Thamert's condition of employment.

John Travers and Russell Page Irwin. Travers and Irwin, members of the Union, claimed that they had not been given seniority preference because of their union membership. Travers contended that a man with two days' less seniority than he had been promoted ahead of him but admitted that he had been promoted subsequently. Irwin contended that, although the length of his service with the respondent entitled him to assignment to a regular crew, he still worked as an extra. In view of the patent pettiness of Travers' charge, the silence of the record as to the respondent's seniority policy, and the failure of the evidence to reveal a casual relation between the union membership of these men and the treatment of which they complain, we are unable to find that the respondent discriminated, within the meaning of the Act, in regard to the condition of employment of Travers or Irwin, with a view to discourage their membership in the Union.

Edward Jones. Edward Jones claimed that his union membership caused the respondent to reverse its process, to his discomfort, from calling him for work to waiting for him to take the initiative. The evidence reveals no casual relation between Jones' union membership and this reversal of procedure.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III A and B 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.

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

CONCLUSIONS OF LAW

1. International Printing and Pressmen's Union, Baltimore Branch, Baltimore Web Pressmen's Union, No. 31, and the pressroom committee are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by interfering with the formation and administration of the pressroom committee and contributing support to it, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The A. S. Abell Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) Discouraging membership in International Printing and Pressmen's Union, Baltimore Branch, Baltimore Web Pressmen's Union, No. 31, or any other labor organization of its employees by threats, coercion, intimidation, or advice;

(c) Recognizing the pressroom committee as a bargaining agency for its employees and in any manner interfering with the formation

or administration of, or contributing support to, the pressroom committee, or any other labor organization of its employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a). Post immediately in conspicuous places in its pressroom notices to its employees stating that the respondent will cease and desist in the manner aforesaid;

(b) Maintain such notices for a period of thirty (30) consecutive days from the date of posting;

(c) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

It is further ordered that the complaint, in so far as it was amended at the hearing to charge that the respondent had engaged in unfair labor practices within the meaning of Section 8 (3) of the Act be, and it hereby is, dismissed.