

In the Matter of EXPRESS PUBLISHING COMPANY and MAILERS LOCAL  
UNION No. 41

*Case No. C-466*

*Newspaper Publishing Industry—Trial Examiner:* possible stigma of prejudice arising from statement of—*Order:* setting aside record and ordering new hearing before another Trial Examiner.

*Mr. Warren Woods*, for the Board.

*Mr. Leroy G. Denman*, of San Antonio, Tex., for the Company.

*Mr. L. M. Lauderdale*, of San Antonio, Tex., for the Union.

*Mr. D. R. Dimick*, of counsel to the Board.

ORDER

*July 8, 1938*

Upon charges duly filed by Mailers Local Union No. 41, herein called the Union, the National Labor Relations Board, herein called the Board, by Edwin A. Elliott, Regional Director for the Sixteenth Region (Fort Worth, Texas), issued and duly served its complaint dated November 1, 1937, against Express Publishing Company, San Antonio, Texas, 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 (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 13, 1937, the respondent filed its answer to the complaint denying that it had engaged in the unfair labor practices alleged therein, and denying that its business affects interstate commerce, within the meaning of the Act.

Pursuant to notice a hearing was held in San Antonio, Texas, on November 22 and 23, 1937, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board, the respondent and the Union participated in the hearing, the first two being represented by counsel and the latter by its secretary-treasurer. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Subsequent to the hearing a brief was submitted by counsel for the respondent.

On March 7, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in certain unfair labor practices. On March 19, 1938, the respondent filed exceptions to various rulings of the Trial Examiner and to the Intermediate Report. Thereafter the respondent requested a hearing before the Board and permission to file briefs. Pursuant to notice, a further hearing was held before the Board on June 9, 1938, in Washington, District of Columbia. The respondent was represented by counsel who participated in the oral argument, and submitted a brief. The Union did not appear.

During the early part of the hearing the Trial Examiner stated that he had seen an editorial in the respondent's newspaper which referred to the National Labor Relations Board. Upon being interrogated as to the meaning of his remark, the Trial Examiner made the following statement:

The statement is made by the Examiner primarily because of this fact. The Examiner's findings and ruling with respect to any hearing are bound to be affected to some extent at least by circumstances coming to the knowledge of the Examiner which in some way affects a particular situation. When such rulings and findings are reviewed that review is solely on the basis of the record in the case. Therefore, it is the purpose of the Examiner to include on the record, in so far as possible, such circumstances surrounding the case as have come to his knowledge, so that the findings and the review may be, in so far as possible, on the same basis.

Seasonable objections were made by the respondent on the basis that the proceedings, by reason of the Trial Examiner's statement, were in violation of certain constitutional guarantees. In its exceptions to the Intermediate Report of the Trial Examiner the respondent contends, inter alia, that the Intermediate Report should be set aside and dismissed and a new hearing had before another Trial Examiner.

Although it does not affirmatively appear that the Trial Examiner was unable impartially to exercise his functions in the particular case, we will order that a new hearing before another Trial Examiner be held in order to remove any possible stigma of prejudice arising from the Trial Examiner's statement.

**IT IS HEREBY ORDERED** that the record in Case No. C-466, be, and it hereby is, set aside, and that a new hearing be held before another Trial Examiner.