In the Matter of EDWARD E. COX, PRINTER, INC. *and* INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION, LOCAL NO. 376

Case No. C-37.—Decided April 22, 1936

Newspaper Publishing Industry—Printing Industry—Unit Appropriate for Collective Bargaining: craft; occupational differences—*Representatives:* proof of choice: membership in union; proxies designating—*Collective Bargaining:* refusal to recognize representatives as bargaining agency representing employees; refusal to negotiate with representatives—negotiation in good faith: meeting with representatives but with no intention of bargaining in good faith; counter-proposals; reasonable effort, in general—*Interference, Restraint or Coercion:* persuasion of employees to resign from union—*Condition of Employment:* non-membership in union.

Mr. David I. Persinger for the Board.
Mr. James R. Emshwiller, of Hartford City, Ind., for respondent.
Mr. Samuel G. Zack, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 18, 1935, International Printing Pressmen and Assistants' Union, Local No. 376, hereinafter referred to as the Union, filed with the Regional Director for the Eleventh Region a charge that the Edward E. Cox, Printer, Inc., of Hartford City, Indiana, had engaged in unfair labor practices, forbidden by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On January 9, 1936, the Board issued a complaint against the Edward E. Cox, Printer, Inc., hereinafter referred to as respondent, the complaint being signed by the Regional Director for the Eleventh Region and alleging that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices, the complaint alleged in substance:

1. That the pressroom at the Hartford City plant of the respondent constitutes a unit appropriate for the purpose of collective bargaining within the meaning of the Act;

2. That on or about August 21, 1935, the Union, representing a majority of the employees in said unit, requested the respondent to

bargain collectively with it, and on said date and on September 28, 1935, October 3, 1935, October 14, 1935 and on October 23, 1935, and at divers other times thereafter, the respondent did refuse and has refused to bargain collectively with the Union and did refuse to recognize the Union as the bargaining agent of said unit, and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivisions (1) and (5) of the Act.

The complaint and accompanying notice of hearing were served on the respondent in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. The respondent filed no answer within the time prescribed in Article II, Section 9 of said Rules and Regulations—Series 1, but at the time of the hearing filed a "Special Appearance and Special Answer," wherein the respondent stated it appeared specially for the purposes only of pleading the question of the Board's jurisdiction over the respondent and over the matters alleged in the complaint; denied that it is engaged in interstate commerce; alleged that the Act violates the First and Fifth Amendments to the Constitution of the United States and is accordingly unconstitutional; and moved that the cause be dismissed or abated. The Trial Examiner allowed the filing of the "Special Answer" without ruling on the motion to dismiss or the plea in abatement.

The hearing was originally set for January 24, 1936 at 10 o'clock a. m., at Muncie, Indiana. It was later postponed to January 30, 1936, at the same place, and the respondent was notified of said adjournment. Pursuant to the notice, the hearing was held before Robert M. Gates, Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded to all parties. Stipulations with regard to the respondent's business were agreed upon by all parties, and were offered in evidence and made a part of the record without objections.

At the conclusion of the Board's testimony dealing with the respondent's business, counsel for the respondent renewed the motion to dismiss the proceeding and for its abatement. The Trial Examiner reserved decision. The motion to dismiss and the plea in abatement are now denied.

On January 17, 1936, the Board directed that the proceeding be transferred to and continued before it, thereupon assuming jurisdiction of the proceeding pursuant to Section 35, Article II of said Rules and Regulations—Series 1.

Upon the record in the case, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

Findings of Fact

I. THE RESPONDENT'S BUSINESS

The respondent is and has been since February 1, 1928, a corporation organized under and existing by virtue of the laws of the State of Indiana, having its principal office and place of business in the City of Hartford City, Blackford County, State of Indiana.

The respondent is engaged in the business of, (1) printing and publishing a daily newspaper known as the "Hartford City News", (2) operating a printing shop for commercial job printing, and (3) printing and selling what is known as "glassine and grease proof paper" to be used for wrapping candy, meat and other commodities. All of the operations necessary in the production of the finished products are carried on in one building. The respondent employs about 55 people.

The respondent purchases various raw materials and supplies both within and without the State of Indiana. The principal raw materials and supplies purchased by the respondent are paper, ink, electrotype and nickletype plates, lumber and nails. The glassine and grease proof paper is purchased from a paper mill in Hartford City, Indiana. In 1935 the respondent purchased over one million pounds of such paper. The orders for purchasing of the newsprint paper used in printing and publishing of the respondent's newspaper are placed with a concern in New York City but the shipments of paper are made from Canada to the respondent's plant. During the year 1935, the respondent purchased approximately seventy-five thousand pounds of ink, most of which came from the States of Illinois, Ohio, Kentucky, Pennsylvania, New York, Wisconsin and other points in the United States. A small amount was purchased in Indiana. The electrotype and nickeltype plates came mostly from the State of Kentucky. The nails and lumber used in the making of shipping cases were purchased in Indiana. A small amount of cellophane is purchased without the State of Indiana.

All of the glassine and grease proof wrappers are printed to order. No stock of such wrappers is carried on hand. During the year 1935 the respondent printed approximately five hundred million such wrappers of various sizes and shapes and for many different types of products. About one million two hundred fifty thousand pounds of such wrappers were printed during the year, 90% of which was shipped out of the State of Indiana. Of the 90% shipped out of Indiana, 50% was sent to the State of Illinois, and 40% to points in other States of the United States.

The newspaper which the respondent prints and publishes has a daily circulation of 2200 of which number 150 are daily sent to sub-

scribers outside of Indiana. The newspaper is a subscriber to a "pony call" service of the United Press and receives "news letters" from the same service. The newspaper carries advertisements of products that are manufactured outside of the State of Indiana.

In 1935, the income from the respondent's business was approximately $200,000. About 80% of this income came from the printing and sale of glassine and grease proof commodity wrappers; 17% came from its newspaper business; and the remaining 3% came from the commercial job printing work. About 70% of the respondent's total income was derived from the shipment of the wrappers in interstate commerce.

The products produced by the respondent are shipped by express, mail, truck, railroad, and traction lines.

The operations of the respondent constitute a continuous flow of trade, traffic and commerce among the several states.

II. THE RESPONDENT AND THE UNION

A. *International Printing Pressmen and Assistants' Union, Local No. 376*

The Union is a labor organization which was formed by the respondent's pressmen and assistants on June 25, 1935 for the purpose of creating an agency for collective bargaining between the respondent and its printing pressmen and assistants. The Union is a local of International Printing Pressmen and Assistants' Union of North America, which is affiliated with the American Federation of Labor.

B. *The appropriate unit*

In connection with all of its business, the respondent employed during the year 1935, on a daily average, 55 persons, 9 of whom were engaged in a supervisory or clerical capacity; 4 were engaged on the editorial staff of the newspaper; 17 as either compositors, linotype operators, paper cutters, inspectors, stereotypers, printer's devils, janitors or shippers; and 25 as pressmen or assistants.

The work and skill required of printing pressmen and assistants, and the hours and conditions of their employment, differ greatly from that of the other of the respondent's employees and it therefore follows that any collective bargaining as to wages, hours and conditions of employment would have to be carried on by them as a group separate and apart from the other employees of the respondent. In its dealings with the Union, the respondent never raised any question with respect to the appropriate unit; and the allegation in the complaint that the pressroom of the respondent constitutes a unit appro-

priate for the purpose of collective bargaining was not denied by the respondent either in its answer or at the hearing.

We find that the printing pressmen and assistants employed by the respondent constitute a unit appropriate for the purposes of collective bargaining.

C. *Designation of union as representative of the employees*

At a meeting of the Union on July 26, 1935, a scale committee was appointed to negotiate a working agreement with the respondent. At or about this time, each of the 18 Union members employed by the respondent authorized International Printing Pressmen and Assistants' Union of North America to "represent my interests in all labor disputes that might occur in this plant." These authorizations were called "proxies" and were to run for a period of one year. Each member signed an individual "proxy." They were offered in evidence and made part of the record.

The allegation in the complaint that on or before August 21, 1935, a majority of the employees in the appropriate unit had designated the Union as their representative for purposes of collective bargaining with the respondent was not denied by the respondent in either its answer or at the hearing. During its dealings with the Union, the respondent never raised the question.

On August 21, 1935, the day on which the scale committee met with officers of the respondent for the first time in an endeavor to negotiate a collective agreement, and at all times thereafter, the Union represented 18 of the 25 pressmen and assistants employed by the respondent. Thus, the Union was designated as the representative for purposes of collective bargaining by a majority of the 25 employees in the unit which we have found to be appropriate for the purpose of collective bargaining.

III. THE UNFAIR LABOR PRACTICES

On August 3, 1935, Joe A. Wilson, international representative of International Printing Pressmen and Assistants' Union of North America, sent the following letter, by registered mail, to the respondent:

> "Will you please advise the writer as to the most convenient time a conference can be held with you to negotiate the attached contract, which covers hours, wages, and working conditions.
>
> "For your information, your employees have chosen the International Printing Pressmen and Assistants' Union of North America as their collective bargaining agency. Your plant as represented covers the Pressroom and those connected with the final production of the product.

"It is the desire of the writer at this conference to arrive at some amicable understanding, and assuring you of our desire for a pleasant relationship in the negotiations of the attached agreement, we are

"Very truly yours,"

Attached to this letter was a proposed agreement pertaining to hours, wages and working conditions. The respondent did not reply to the letter.

On August 21, 1935, the scale committee, accompanied by Albert Weber, president of International Printing Pressmen and Assistants' Union, Local No. 171, as representative of the International, met with Jack Dolan and Edward E. Cox, Jr., president and treasurer, respectively, of the respondent. On September 28th, accompanied by Mr. Wilson, the scale committee again met with the same officers of the respondent. On each occasion, the efforts of the representatives of the Union to bargain collectively were categorically repulsed. Mr. Wilson testified that on the latter occasion, Mr. Dolan told him "that he was not interested in recognizing the union, nor did he want to deal with them, or even the committee representing the employees." During the period between these meetings, a Commissioner of Conciliation of the United States Department of Labor had attempted, without success, to prevail upon the respondent to take a more conciliatory position.

The scale committee again met with the officers of the respondent on October 3rd and although the respondent would not enter into collective bargaining, it advised Wilson to call the respondent by telephone. Accordingly, on October 11th, Wilson called Dolan and was told that the matter was being submitted to the respondent's Board of Directors and that he would be advised the latter part of October as to their decision. The scale committee again met with the respondent's officers on October 14th and again the respondent refused to enter into negotiations looking toward a collective agreement. The respondent took the position that to recognize the Union or to negotiate an agreement would mean the paying of higher wages and that because the margin of profit on the work being performed at the plant was so small, it could not afford to pay higher wages. Not satisfied with the position taken by the respondent and the reason advanced for its refusal to enter into collective bargaining, the committee informed Dolan that it would file charges with the National Labor Relations Board. Dolan thereupon requested the committee to withhold such action until he could place the matter before the Board of Directors. This the committee agreed to do. On October 23rd Dolan called in the committee and informed them that the Board of Directors had turned down all proposals; would

refuse to recognize the Union as the representative of its pressroom employees; and would not bargain collectively with them. Thereafter on October 26th, the Union filed charges of unfair labor practices against the respondent.

As a result of the intercession of Robert Cowdrill, Regional Director of the Eleventh Region, National Labor Relations Board, the committee, together with Joe A. Wilson, met with Dolan and Cox on November 11th. Wilson read to the group the proposed working agreement which had been submitted to the respondent on August 3rd. After the proposed contract was read, Wilson then asked Dolan whether or not there were any objectionable paragraphs, to which Dolan replied,—"It is all objectionable, we have bargained and that is all we have got to do." Dolan thereafter stated that if the workers were not satisfied, they could get out, and that the respondent would not recognize the Union or the committee. When asked by Wilson if it would submit to the committee, "counter-proposals or something tangible, that we could work from", Dolan stated that it was unnecessary, "that they were not interested in collective bargaining, nor were they interested in recognizing anybody".

By letter dated November 13th, Wilson submitted a revised draft agreement to the respondent. This draft eliminated the closed shop and Union scale provisions of the original draft, and substituted for the latter a provision for a 10% increase in all wages. However, according to Wilson, Mr. Dolan "absolutely turned it down".

Although the respondent met with the committee on several occasions, it did not at any time attempt to bargain collectively or make an effort to come to an agreement. It was only after the intervention of Mr. Cowdrill and after the charges against it were filed with the Board that the respondent even pretended to negotiate an agreement. By listening to a committee member read the proposed agreement and then turning the proposals down in their entirety without submitting counter-proposals or entering into an honest and sincere discussion of the proposals, the respondent did not fulfill its obligations. As was said in—*In the Matter of Atlantic Refining Company*, decided on March 19, 1936, "Collective Bargaining . . . means that the employer is obligated to negotiate in good faith with his employees as a group, through their representatives, on matters of wages, hours and basic working conditions and to endeavor to reach an agreement for a fixed period of time." We find that the respondent did not negotiate in good faith and did not endeavor to reach an agreement.

It is therefore clear that the respondent refused to bargain collectively with the Union as the representative of its employees in respect to rates of pay, wages, hours of employment and other conditions of

employment. By such refusal, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Not only did the respondent refuse to recognize the Union as the representative of the employees in the pressroom and to enter into collective bargaining with the Union; it also entered upon a campaign of smashing the Union. Some time during the week of January 20, 1936, Dolan called Elwood W. Farr, secretary-treasurer of the Union and a member of the scale committee, into his office. During the discussion, Dolan suggested that Farr talk to the members of the Union individually and ask them to resign from the Union. Farr did not talk to the men individually but called a meeting on Saturday afternoon, January 25, 1936, and asked the Union employees whether or not they desired to continue their Union activities. The men voted to continue their Union affiliations. This action of the Union workers was reported to Dolan to which he replied that it would be "a case of dog eat dog" from then on.

The case of Claude Beeson is a further indication of the respondent's interference with the rights of its employees as guaranteed in Section 7 of the Act. Beeson had been an employee of the respondent for 12 years and was a charter member of the Union. Shortly after the Thanksgiving holiday in 1935, Beeson was discharged for having left his work to go home for one hour for a Thanksgiving dinner with his family, without having obtained the permission of the foreman. Three times in December, 1935, he tried to get back his job. On December 28th and 31st, Dolan and Cox told him that they were not hiring Union men. On January 18th, Beeson asked Dolan whether he could go back to work if he resigned from the Union. Dolan thereupon told Beeson to come back later. Beeson did resign from the Union on January 19th, and applied for work on January 20th, informing Dolan and Cox of his action in resigning from the Union. Beeson was then told to report to work the following Monday.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

Interference with the activities of employees in forming or joining labor organizations result in strikes and other forms of industrial unrest. In 1934, and in January to July, inclusive, 1935, such interference by employers in the book and job printing industry resulted in strikes and lockouts involving 1,613 workers and 34,150 man-days of idleness.

The aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

Upon the basis of the foregoing, the Board finds and concludes as a matter of law:

1. International Printing Pressmen and Assistants' Union, Local No. 376, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The printing pressmen and their assistants employed by the respondent constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, International Printing Pressmen and Assistants' Union, Local No. 376, having been duly designated on or about July 26, 1935 by a majority of the employees in an appropriate unit as their representative for the purposes of collective bargaining, has at all times thereafter been the exclusive representative of all the employees in such unit.

4. By its refusal to bargain collectively with the Union as the representative of its employees in respect to rates of pay, wages, hours of employment and other conditions of employment, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

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

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Edward E. Cox, Printer, Inc., and its officers and agents, shall:

1. Cease and desist from refusing to bargain collectively with International Printing Pressmen and Assistants' Union, Local No. 376, as the exclusive representative of the printing pressmen and their assistants employed by the respondent, in respect to rates of pay, wages, hours of employment and other conditions of employment.

2. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of the right of 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 and protection.

3. Take the following affirmative action which the Board finds will effectuate the policies of the Act: Upon request, bargain collectively with International Printing Pressmen and Assistants' Union, Local No. 376, as the exclusive representative of the printing pressmen and their assistants employed by the respondent, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

[SAME TITLE]

AMENDMENT OF DECISION

April 29, 1936

The National Labor Relations Board, having duly issued its decision in this matter on April 22, 1936, and being fully advised in the premises, hereby issues its Amendment of Decision, by adding to the Conclusions of Law in the decision the following paragraph:

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

MR. CARMODY took no part in the consideration of the above Amendment of Decision.