

4. The Respondents have not engaged in unfair labor practices with respect to the employees of DiDuca Brothers, Inc., General Electric Corporation, Allis-Chalmers Manufacturing Company, Spitzley Plumbing and Heating Company of Detroit, Babcock and Wilcox, Clement Electric Company, and Crane Company, nor by refusing to furnish or refer pipefitters for work on any of Edison's projects.

[Recommendations omitted from publication.]

Max Silver, Irwin Silver and Edward Braude, Co-Partners, d/b/a Max Silver & Son and International Ladies' Garment Workers' Union, AFL-CIO. Case No. 4-CA-1719. March 16, 1959

DECISION AND ORDER

On December 24, 1958, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, and further finding that the Respondents had not engaged in other unfair labor practices, as alleged in the complaint, and recommending that the complaint be dismissed insofar as it alleged such violations, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents, the General Counsel, and the Charging Party filed exceptions to the Intermediate Report, together with supporting briefs.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Max Silver, Irwin Silver and Edward Braude, d/b/a Max Silver & Son, Philadelphia, Pennsylvania, their agents, successors, and assigns shall:

¹ The Trial Examiner's recommended order is modified in certain respects, to remedy all of the specific violations found. As the extent of such violations does not warrant the broad order recommended by the Trial Examiner, we have adopted a narrow order.

1. Cease and desist from:

(a) Threatening to close down the plant if the Union came in, promising and granting pay raises and other benefits in order to influence employees at the time of any union-organizing campaign, and interrogating employees in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union AFL-CIO, or any other labor organization, 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.

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

(a) Post at their plant and office at Philadelphia, Pennsylvania, the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by Respondents' representative, be posted by it immediately upon receipt thereof, and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Fourth Region (Philadelphia, Pennsylvania) in writing, within 10 days from the date of this Order, what steps they have taken to comply therewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondents discharged and refused to reinstate Grace Johnson in violation of Section 8(a) (3) and (1) of the Act.

²In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

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, notice is hereby given that Max Silver, Irwin Silver and Edward Braude, Co-Partners, d/b/a Max Silver & Son:

WILL NOT interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization by threatening employees with economic reprisal by closing down the plant if the union came in, promising or granting pay raises or other benefits in order to influence employees at the time of any union organizing campaign, or interrogating employees in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1).

WILL NOT in any like or related manner interfere with, restrain, or coerce 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.

All employees are free to become, remain, or to refrain from becoming or remaining, members of International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization.

MAX SILVER & SON,
Employer.

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

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT
STATEMENT OF THE CASE

These proceedings, brought under Section 10(b) of the National Labor Relations Act (61 Stat. 136), herein called the Act, were initiated by the filing of a charge by International Ladies' Garment Workers' Union, AFL-CIO, dated May 21, 1958. Based upon such charge, the General Counsel of the National Labor Relations Board (separately designated as General Counsel and the Board) issued a complaint against the Respondent, dated September 5, 1958, alleging that Respondent had engaged in unfair labor practices affecting commerce, in violation of Section 9(a)(1) and (3) of the National Labor Relations Act by interfering with, restraining, and coercing employees, and by discriminatorily discharging an employee. More specifically, the complaint alleged that Respondent did on or about May 2, 1958, discharge employee Grace Johnson and has, at all times since May 2, 1958, failed and refused to recall or reinstate said Grace Johnson to her former or substantially equivalent position, all for the reason that she joined and/or assisted the Union, and engaged in other concerted activities for the purpose of collective bargaining and other mutual aid and protection. On motion by General Counsel, the complaint was amended at commencement of the hearing by the addition of an allegation charging that the Respondent promised and granted pay

raises and other benefits in order to influence employees at the time of the union's organizational campaigns.

The Respondent filed its answer denying the commission of the alleged unfair labor practices. Pursuant to notice, a hearing was conducted at Philadelphia, Pennsylvania, on October 20 and 21, 1958, by Trial Examiner John C. Fischer, duly designated by the Chief Trial Examiner. All parties were present and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues involved, to argue orally upon the record, and to file written briefs and proposed findings and conclusions within a fixed time from the close of the hearing. Concluding arguments were waived, but comprehensive briefs were submitted on December 12, 1958, by the General Counsel, the Respondent Company and the Union. These briefs have been carefully considered by the Trial Examiner. Motion to correct the official record by substituting the word "promising" for the typographical error "policing" on page 10, at line 23 was granted by the Trial Examiner, as was typographical error concerning pagination.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. BUSINESS OF THE EMPLOYER

Max Silver, Irwin Silver, and Edward Braude, hereinafter called the Respondents, are copartners doing business as Max Silver & Son, with their principal offices and place of manufacturing located in Philadelphia, Pennsylvania, hereinafter called the Company. They are engaged in the manufacture and sale of inexpensive ladies' cotton dresses. During the 12-month period preceding the date of the occurrence of the events alleged in the complaint, Respondents sold and shipped in excess of \$100,000 worth of such dresses from their plants to customers located outside the Commonwealth of Pennsylvania.

It is found that Respondents' operations affect interstate commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization admitting to membership employees of Respondent Company.

III. THE UNFAIR LABOR PRACTICES

In addition to the charge that Respondents discharged Grace Johnson and have failed to reinstate her because she engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, the complaint, as amended, alleges that Respondents interfered with, restrained, and coerced employees by acts and statements, including threats to close the plant if the Union came in, and promised and granted pay raises or other benefits in order to influence employees at the time of the union's organizational campaign. The allegations of illegal interference, restraint, and coercion, including threats, promising, and granting pay raises may first be considered and decided. However, a fundamental factor to be borne in mind in the case is the *time element* of the termination of employee Johnson—such termination occurring at the height of the union organizing campaign.

The resolution of this case turns solely on the accreditation of the versions of the various witnesses. The law applicable to the facts is simple—the problem is whether to believe—or how much to believe—of the testimonies of the witnesses of both the Union and the Company. Each side produced five witnesses during the hearing. General Counsel offered Complainant Grace Johnson, James Mahoney and Ethel Paul, union officials; Aristo Morris and Ethel Sherrill, former employees of the Company who had quit for personal reason not involved in this case. Respondents relied on officials and employees of the Company including Max Silver, president, Irwin Silver and Edward Braude, partners; Mary Sandomato, supervisor, and Catherine Opher, a long-time employee. All of the witnesses except Ethel Sherrill and Aristo Morris are in the nature of interested parties—Sherrill and Aristo being no longer employed or concerned with the case.

A welter of evidentiary conflicts are apparently produced and presented in the comprehensive briefs submitted by parties; largely occasioned, however, by the

interpretations put on the testimonies of various witnesses by respective counsel. These briefs constitute part of the official record and have been carefully studied and considered by the Trial Examiner. Thus, it is incumbent upon the Trial Examiner to make a recitation of his own evaluation of the conflicting contentions and his own interpretations of testimonies, assign the proper credence and the weight to be given conflicting versions, and to draw his own conclusions and inferences based upon the record as a whole.

The evidence establishes that the Union began an organizing drive early in April 1958, by means of its representatives passing out handbills, postal-card applications at the plant entrance, and by soliciting employee memberships in the Union. The union leaflets were distributed indiscriminately to workers and company officials alike. Obviously, Respondents were aware of these organizational efforts. The Union had attempted, unsuccessfully, on previous occasions to unionize the plant.

The evidence bearing on the allegations in the complaint that Respondents threatened to close the plant if the Union came in, and promised and granted pay raises and other benefits to defeat the Union, was brought out in the testimony of Aristo Morris. Aristo was employed as a shipping clerk—from November 1957 through July 1958—during the time of the alleged unfair labor practices involved herein. It will be recalled that Aristo, like Ethel Sherrill, had severed their employment with the Company for personal reasons prior to the commencement of this case, and they represent the most objective and impartial witnesses offered by either side. The other witnesses, as previously noted, have personal interests in the outcome of this case. (Ethel Sherrill did not testify upon the pay raise, etc., issue.) The practice of granting raises immediately after the advent of a union drive is generally viewed with suspicion and frowned upon by the Board—having found to have been the motive behind unfair labor practices in cases too numerous to mention.

As found by the Trial Examiner, Catherine "Kitty" Opher, spokesman for all seamstresses, "along in February or March" went to Irwin Silver and talked about a raise for "all the girls . . . Well, Irwin told me he would talk to his father [Max Silver]. . . . Well, about, a month later, I went to Irwin again . . . and he told me he had talked to his father about the raise . . . and I told him that I wanted a meeting held in front of the girls . . . he told us that he would give us a raise." The meeting was arranged and held at noon.

At this meeting—"sometime in April," actually on April 25, and during the union campaign, the girls demanded a 5-percent raise. According to Kitty: "We got a 3 percent instead of 5." Questioned by counsel as to why she acted as spokesman for the girls, she replied: "Well, I guess I am about the biggest talker there are. That's one reason."¹

All of the employees, including the male employees, attended the second meeting. A third meeting was held with the "boys" only in attendance. The accepted testimony of Aristo Morris was that the men, consisting of Aristo, shipping clerk, Richard Maybley, bundleboy, Frank, a spreader, and Herman, a cutter were not satisfied, and at the end of the meeting and in Aristo's words: "had came to an understanding, and we wouldn't agree on anything so, he [Irwin] said, 'We will talk to you individually, too.'" Irwin then promised to talk with his father about a raise. About a week later, Irwin called all of the boys in and told them that his father had agreed to give them a raise of 10 cents per hour. The raise became effective in the next pay period. Irwin also urged the boys to join the company bonus plan which was an agreement wherein the Company matched each dollar saved and contributed weekly by an employee who worked 3 days per week. Irwin also promised to see about getting them covered in the Blue Cross insurance program. Nothing materialized from this promised insurance protection except that their names were taken by Irwin. Irwin's explanation was that a girl would have to be employed a year before being granted Blue Cross benefits.

¹To the Trial Examiner, it was apparent that Opher's diffused testimony should be scrutinized most carefully. Her testimony that the Friday noon meeting was held before the union campaign commenced is discredited. Although a witness for Respondent the evidence shows that she had attended two union meetings. Opher was a "glib" but unconvincing witness.

It is clear from the evidence of record that these raises given, the promises to include employees in a bonus plan, and promise to cover the boys with health insurance did not eventuate until after the union organizational campaign was well advanced. The Trial Examiner concludes that the Company made these concessions in order to influence the employer adversely to the Union during its organizing drive. This is an unfair labor practice.

Aristo credibly testified that at his first meeting, April 25, Irwin Silver stated that the Union had tried to get in the plant but "everybody stuck together and they bought the Union off, and he was asking us to stick together again and not to turn in the cards." Aristo's accepted testimony in this connection reads as follows: "And so, after that, he said the reason why he didn't want the Union to come into the shop was because they would want too big a percentage of the profit, and he couldn't afford to give it to them, that he was the last cheap cotton factory in the North, and that if they came into the Company they wouldn't be able to operate and he would have to close up and move down South."

There is testimony by Aristo that Irwin Silver said that he changed or concealed dress prices from his father Max Silver, which assertions were denied by Irwin. This issue is not material to the case and no credibility resolution need be drawn by the Trial Examiner.

With reference to the question whether Grace Johnson was discharged on May 2 or quit voluntarily, there are as many different versions as there were witnesses who testified on this phase of the case. The situation as found by the Trial Examiner is that Grace Johnson was employed by the Company in January 1958, to work as a sewing machine seamstress on an evening shift from 5:30 to 10:30. She also worked a full 8-hour day at a laundry to supplement the family income and assist her husband who was preparing to enter school. She had previously (1954-56) been satisfactorily employed in similar garment work with Wentworth Mfg. Company, in South Carolina. She was also a former union member.

As previously indicated, the union organizational campaign began early in April. Johnson accepted leaflets passed out to employees, and mailed to the Union the attached postal-card application for membership. She stated that the girls discussed the Union and she "told a few girls around the shop" that she sent her card in. Union officials contacted her home. She then visited the union hall herself on Thursday May 1 and was driven to work at the company plant by two union organizers. When she alighted from the auto she stated that she saw Irwin Silver standing at the corner of Fourth and Arch streets and that he was looking at her.²

Johnson stated that Max Silver came up to her machine later that night and in presence of another girl told her that he had heard that she had signed a union card. She denied that she had signed and credibly quoted him as saying . . . "there wouldn't be no union in the shop, and if there was any union in the shop, that he would close up the shop and he would retire, and that he would send his son, one of his sons out as a cutter and one out as a salesman. He said he didn't know whether we was stupid or not, but he knowed that if the Union came in the shop, there wouldn't be no night work, and he also asked me did I plan to come in to work in the daytime, and I told him yes. He told us, he said, "I just want you to know there won't be no room for you." Max Silver denied this conversation but the Trial Examiner finds the events to have occurred as recited.

The denouement occurred the next night, Friday May 2. As Johnson came to work this evening she was observed by Partner Braude being handed a leaflet by one of the organizers. She immediately became involved in a series of disconcerting happenings. The thread broke on the machine she was operating and Braude transferred her to another machine upon which she worked until the first machine was repaired. When she returned, mechanical difficulties again occurred and she was retransferred to still another machine. During these untoward experiences she was the subject of critical attention by both Floorlady Mary Sandanato and Max Silver. Floorlady Sandanato testified that she assigned Johnson her work and set up the machine and when next observed she was standing idly by her machine which was out of commission because of broken thread. Sandanato stated that she got angry at Johnson and said: "After all these months, I said, you don't even know how to thread the machine. . . . Well, then, I don't know what

² Irwin Silver denied that he was there at the time or that he saw Johnson. The Trial Examiner, however, accepts her version.

happened, and for 5 minutes later, Mr. Silver had her at another machine." Sandanato then testified that the next time she observed Johnson, she was getting up and asked when the reason stated: "She says to me, 'I don't have to work,'" and that was the end of that. She went back there. She got dressed, and after that I heard they paid her off. She asked to be paid." The floorlady stated that the only thing she heard Mr. Silver say was: "Now don't mess this machine up." She stated that he went over and repeated this "again and again."

Johnson's version was that a few minutes after Braude talked with her at her machine that Max Silver came over to her and asked to see the leaflet which had been given her when she came in, stating: "I asked him why did he want to see it, and he said he just wanted to see it and to show it to Irwin." She stated that she gave it to him and he took it into his office and returned 20 or 30 minutes later. She stated further that upon his return they engaged in a discussion about the leaflets and he told her to finish the bundle and "you are fired." Johnson stated that she went to the dressing room and when she returned Sandanato was standing at her machine and Johnson told her she was fired.

Max Silver stated that when Grace Johnson first came to work and said she would like to come back and learn operating he took an interest in her. The Trial Examiner accepts his forthright testimony in that connection: "First, we set her on pocket setting and I seen she cannot do it very right, so I said I may try you on different small parts, which I did. All the time, I tried my best, all the time for her, to support her as much as I can. I used to send her yet with work, as the forelady mentioned, I did myself fix up work that the floorlady shouldn't see it, even, that she should stay there, and I did that for her. Why would I go to work and want to fire that girl when she was standing and the machine was spoiled and I gave her another machine."

Q. (By Respondent's counsel, Norris.) As far as you were concerned, what occurred between you and Johnson?

A. When I told her, she say, "I am sick of that job." And she told me, "You can take that job" she used a not nice expression, "I don't have to work, you can take that stinking job." That's exactly what she said. And she said, "I got a job in the daytime, and I don't need your job, because there is messed up and here messed up, and I am sick and tired of doing them things." She said, "I got a job and I am quitting."

Q. As a result of what did she make these statements?

A. As a result, because the double needle machine was messed up over six dozen of work, and she knows that she would have to repair it.

With the class of transient and inept help that the Company had to put up with to staff the evening shift—having a turnover of 4 to 1 according to personnel man, Braude—it be only natural that Silver would try to help train and keep an operator who had 2 years' previous experience. This logical version is accepted and relied upon. No doubt Max Silver, Sandanato, and even Braude gave Johnson a hard time by criticizing her—what with her known union activities and mechanical difficulties she was encountering. Although Max Silver, as well as the floorlady, denied interrogating her as to whether she had signed the union card, attended meetings and was active in organizing, the Trial Examiner finds that they did—and further finds that such conduct is violative of Section 8(a)(1) of the Act. The fact that Max Silver is testimonially credited over Johnson as to the circumstances of her termination is a common judicial occurrence. It does not follow that simply because a fact finder does not believe a particular thing to which a witness testified that everything he says must then be rejected. Judge learned Hand stated the rule in *N.L.R.B. v. Universal Camera Corporation*, 179 F. 2d 749 (C.A. 2) thus:

It is no reason for refusing to accept everything that a witness says because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all.

The same rule applies to the testimony of Grace Johnson and the witnesses.

Ethel Sherrill who was only employed for 5 or 6 weeks and like Aristo Norris should be classified as an impartial witness, was operating a machine adjacent to Johnson on the night in question. Sherrill testified that around 6 o'clock Max Silver came to Grace's machine and asked if Grace had received a leaflet from outside. This leaflet was the one which advertised the meeting of the next Monday

night. Being informed that she had received a leaflet, Silver asked to see it and Grace got up and brought the paper to Silver. Sherrill stated: "He looked at it, and then he asked her if she was going to the meeting, and she told him 'yes,' and he told her she could go, 'you can go now.' . . . Well, she got up from her machine and then I didn't see her any more." Sherrill's testimony as to any other conversations or events was negative. However, Sherrill admitted that she attended the advertised union meeting on the following Monday night, May 5, but did not join. The Trial Examiner concluded that Sherrill's recollection was at least hazy—in fact that she merely "parroted" Johnson's charge whom she followed on the witness stand. The Trial Examiner finds from a close study of all of the versions of conversations, interrogations, and criticisms occurring that night, that Grace Johnson and Max Silver became engaged in an altercation and that she quit in a huff as indicated by Silver. She had worked all day in a laundry, had been criticized by supervisors for "messing up" work, and was confronted with having to re sew six dozen dresses. She impressed the Trial Examiner as an impetuous person. It is significant that the Company did not affirmatively plead that Johnson was fired for cause if she had been discharged. Accordingly, it will be recommended by the Trial Examiner that the allegation of violation of Section 8(a)(3) discriminatory discharge of Grace Johnson be dismissed.

James Mahoney, the union organizer who drove Grace Johnson down to the plant from the union hall, and who was seen by Irwin Silver, testified that "after we were in the process of handing out leaflets, we contacted the people of Max Silver & Son Company, and Mr. Silver himself came down one evening, as was the practice of he and his son and his son-in-law, to stand in front of the plant during the time when the first shift was coming out and the second shift was going in. He engaged in a conversation with myself and Ethel Paul, and the crux of this conversation was that we were wasting our time in our organizational efforts here, because he would not operate a union—organized shop in this area, and that if we were to organize the shop, he would cease to run his business here." Max Silver denied this and similar testimony attributed to him. The Trial Examiner concluded nevertheless, that such was Silver's state of mind after operating 40 years, and having lost money as a result of labor and business conditions then existing, and that he so informed the organizers. Since the Company was not then represented by the Union as bargaining for his employees, and since he was speaking to union officials and not, in this instance, threatening employees, Silver was within his rights. Although not basis for a charge under Section 8(a)(1), this evidence documents and supports like threats made to employees.

Ethel T. Paul, associated with the Union as an organizer testified in support of organizer Mahoney that Catherine "Kitty" Opher was present at union meetings which she, Paul, attended.

Accordingly recommendations to the Board, with appropriate suggested remedies, will be made in light of the facts found and conclusions reached herein by the Trial Examiner.

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. Respondents Max Silver, Irwin Silver and Edward Braude, co-partners, d/b/a Max Silver & Son, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By threatening to close down the plant if the Union came in, and promising and granting certain pay raises and other benefits, the Respondents interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(3) 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.

[Recommendations omitted from publication.]