

In the Matter of THE BOSS MANUFACTURING COMPANY and INTERNATIONAL GLOVE WORKERS' UNION OF AMERICA, LOCAL No. 85

Cases Nos. C-115 and R-40.—Decided August 27, 1937

Glove Manufacturing Industry—Interference, Restraint or Coercion: anti-union statements; attempts to persuade employees to resign from union; efforts to secure disclosure of identity of union members; questioning employees regarding union activities and meetings—*Unit Appropriate for Collective Bargaining:* production employees; eligibility for membership in complaining union—*Representatives:* proof of choice; membership in union—*Collective Bargaining:* refusal to recognize and negotiate with union as exclusive representative; insistence upon proportional representation; employer's duty as affected by majority rule—*Discrimination:* discharges for union activity; non-reinstatement following strike—*Strike:* provoked by employer's unfair labor practices—*Employee Status:* strikers; employees discriminatorily discharged—*Reinstatement Ordered:* employees discharged; strikers, upon application for reinstatement—*Back Pay Awarded:* employees discharged; strikers, from date of denial of application for reinstatement.

Mr. Robert R. Rissman for the Board.

Fyffe and Clarke, by *Mr. John Harrington*, of Chicago, Ill., for the respondent.

Mr. Hyman A. Schulson, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

Upon charges duly filed by International Glove Workers' Union of America, Local No. 85, herein called the Union, the National Labor Relations Board, herein called the Board, by Lynn W. Beman, Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated April 17, 1936, against The Boss Manufacturing Company, Kewanee, Illinois, herein called the respondent, alleging that the respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and accompanying notice of hearing were duly served upon the parties.

In respect to the unfair labor practices, the complaint, as amended, alleged in substance (1) that the respondent discharged the following employees upon the dates set forth and thereafter refused to

reinstate them: Marion McCullough, Joe Dragolovich, Jerry Barry, and Lee Brandy on about July 5, 1935, William Schneider,¹ on about July 12, 1935, Grace Bremmer on about July 8, 1935, and Nick Dragolovich,² for joining and assisting the Union; (2) that on August 8, 1935, the Union was designated by a majority of the production workers of the respondent as their representative for collective bargaining; (3) that on about September 24, 1935, and thereafter, the respondent had refused to bargain with the Union as the exclusive representative of its production workers, who constituted a unit appropriate for purposes of collective bargaining; (4) that on several dates prior to August 8, 1935, the respondent had refused to bargain collectively with the Union and that the result of such refusals was a strike at the respondent's plant in Kewanee, Illinois, lasting from August 5 to October 16, 1935; (5) and that the respondent has urged, persuaded, and warned its employees against becoming members of the Union, has kept the members and their meetings under surveillance, and has otherwise coerced and intimidated its employees and the Union.

On April 22, 1936, the respondent filed an answer to the complaint admitting the general nature of its business and that it caused certain raw materials to be purchased and transported in interstate commerce, and certain of its products to be transported in interstate commerce, but denying that its acts constituted a flow of commerce among the several States. It further denied discharging the employees named in the complaint, but admitted that it failed to rehire Nick Dragolovich. It also denied the alleged unfair labor practices.

Subsequently the respondent filed a written motion to dismiss the complaint upon the grounds that the alleged unfair labor practices do not constitute unfair labor practices affecting commerce as defined by the Act, that the Board has no jurisdiction, and that the Act is unconstitutional for several reasons.

On January 13, 1936, the Union petitioned the Board for an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On March 27, 1936, the Board directed the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9 (c) of the Act and Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, as amended.

Pursuant to notice, a joint hearing on the complaint and petition was held in Kewanee, Illinois, commencing on April 30, 1936, before Daniel M. Lyons, the Trial Examiner duly designated by

¹ The name of William Schneider was stricken from the complaint at the hearing.

² The complaint does not allege the date of his discharge.

the Board. The Board and the respondent were represented by counsel. At the commencement of the hearing the motion of counsel for the Board to consolidate the hearings in both the complaint and representation cases was granted. Thereafter, counsel for the respondent renewed the motion to dismiss upon the grounds set forth in the written motion. The Trial Examiner denied the written and oral motions to dismiss insofar as they rested upon the ground that the Act is unconstitutional, reserving his ruling on the other grounds until evidence as to the nature of the respondent's business had been introduced. Counsel for the respondent excepted to the Trial Examiner's ruling, and asked leave to have its exception saved in the event that the motion should be finally overruled. The Trial Examiner granted the request. During the hearing, after evidence on the respondent's relation to interstate commerce had been offered, the Trial Examiner denied the respondent's motions to dismiss in their entirety, saving the respondent's exceptions. After interposing his motion to dismiss, John Harrington, counsel for the respondent, announced that the respondent would rely upon its motions to dismiss and would not further participate in the hearing. He thereupon departed from the hearing room.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. The respondent filed a brief to which we have given due consideration.

Subsequently the Trial Examiner filed an Intermediate Report on the complaint finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7) of the Act, and recommending reinstatement and back pay to Marion McCullough, Jerry Barry, and Grace Bremmer. However, he found that the evidence did not sustain the allegations of the complaint that the respondent had refused to rehire Nick Dragolovich and had discharged and refused to reinstate Jess Harlan, Lee Brandy, and Joe Dragolovich because of union activities. Exceptions to the Intermediate Report were thereafter filed by the respondent.

On July 28, 1937, the Board granted the Union permission to withdraw its petition.

We find no error in the Trial Examiner's rulings upon the respondent's motions and objections, and such rulings are hereby affirmed. As set forth below, we also find that the evidence supports the findings and conclusions made by the Trial Examiner in his Intermediate Report that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and

(7) of the Act. However, for reasons set forth below, we find that the Trial Examiner erred in finding that Jess Harlan had not been discharged for union activities. We have fully considered the other exceptions to the Trial Examiner's Intermediate Report and find no merit in them. They are hereby overruled.

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

FINDINGS OF FACT

I. RESPONDENT AND ITS BUSINESS

The respondent, The Boss Manufacturing Company, is an Illinois corporation, having its administrative and general management offices and a plant at Kewanee, Illinois. The officers of the respondent are: Thomas R. Stokes, president; Ellis J. Waller, vice president; Charles D. Terry, secretary and treasurer; and Frank M. Lay, chairman of the board of directors. Its sales offices and branch factories used for purposes of manufacture, storage, sale, and distribution of its products are located in Toledo, Findlay, and Bluffton, Ohio; Fort Wayne and Lebanon, Indiana; Chicago, Peoria, and Kewanee, Illinois; Kansas City, Missouri; Los Angeles, California; and Brooklyn and New York, New York. The respondent's stated capital is \$3,250,000.00; the total value of all its property everywhere is \$4,426,106.86; its gross business transacted during 1935 was \$4,327,194.84, of which \$1,155,079.03 was transacted in Illinois.³

The respondent is principally engaged in the manufacture, sale, and distribution of workmen's gloves, mittens, and corn huskers,⁴ and is the largest manufacturer of workmen's gloves in the United States. The plant at Kewanee consists of the machine shop, sewing, receiving, stock, and shipping rooms, cloth cutting, leather cutting, riveting, cuff, finishing, and clerical departments. The principal raw materials used by the respondent in the manufacture of its finished products are leather, cotton, hide skins, flannel cloth, ducking, canvas, cotton cloth, knit tubing, thread, steel, cartons, boxes, rivets, coal, and coke. Over 50 per cent of the raw materials purchased by the respondent come from States other than the State of Illinois. They are shipped to Kewanee, Illinois, by rail, express, and motor truck.

The cloth comes to the Kewanee plant in bales and is there cut into the shape of gloves. The leather comes to the plant in bundles or bales and is there cut into pieces for leather palms, leather fingertips and other pieces, to be combined by sewing into gloves made of a combination of leather and cotton. Some of the cut leather is put

³ Board's Exhibit No. 8.

⁴ Corn huskers are hook-like implements fitted to the hand by means of leather straps or thongs.

into bundles and shipped to other plants of the respondent to be there combined with cotton gloves. After the gloves are sewed, they are finished and prepared for shipment. Some of the finished gloves are packed in the finishing room and sent directly to the shipping room from which they are shipped directly upon order. The cut leather for shipment is usually shipped out as fast as it is sent to the shipping room, the only delay usually being for the purpose of making up a bale or case for shipment.

Most of the respondent's finished products are sold and shipped to its branch sales offices and customers throughout the United States. Large quantities of incomplete and partially manufactured and fabricated gloves and mittens are shipped by rail and trucks to the other plants of the respondent in States other than the State of Illinois to be further manufactured, fabricated, and finished. The products of the respondent are sold under a trademark which is registered by the respondent in the United States Patent Office, for use in interstate commerce.⁵ The respondent advertises in trade magazines and by direct mail.

II. THE UNION

International Glove Workers' Union of America, Local No. 85, affiliated with the American Federation of Labor, is a labor organization which admits to membership any person, not an employer, superintendent, foreman, or forewoman, who is actually engaged in the occupation of making gloves or mittens. International Glove Workers' Union of America has approximately 17,000 members and has signed collective bargaining agreements with 374 factories located in Fulton County, New York, New York, all the glove factories located in New York City, and a number of factories in Wisconsin and Minnesota.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

On February 22, 1935, the employees in the leather cutting department of the respondent organized an independent organization for the purpose of dealing with the respondent concerning grievances against the foremen in the leather cutting department, better working conditions, and the abolition of the Bedeaux system of wage payments.⁶ Active in the work of the independent organization were

⁵ Board's Exhibit No. 9.

⁶ The Bedeaux system is a rather complicated wage payment plan, which reduces all factory work to a common denominator by setting a standard amount of required production per minute for every sort of job. The standard is spoken of as 60 points or "B's" per hour. For reaching it, workers are given a moderate bonus, and for exceeding it, they receive 75 per cent of the saving, the remaining 25 per cent going to foremen, indirect labor, and management.

Marion McCullough, Ernest Green, and Roy Kerr, all employees of the respondent, who constituted the negotiating committee which conferred about working conditions with the officers of the respondent at various times.

On about April 17, 1935, James E. Taylor, general organizer of the International Glove Workers' Union, after addressing a meeting of the independent organization, succeeded in inducing its members to affiliate with the International Glove Workers' Union of America. The Union received its charter on about May 8, 1935.

The respondent was cognizant from the first of activities of the Union in its factory. On about May 31, 1935, John Jones, a foreman, and William Paul, an assistant foreman, approached Camille Tremont, Ernest Paul, James Johnson, and Joe Mahalick, glove cutters of the respondent, with the proposal that one or more of them attend meetings of the Union to "go to bat for the company", intimating that "the boys would be taken care of." During the course of the conversation Jones remarked that he had a talk that morning with Charles W. White, superintendent of the plant, who was disturbed over the fact that with 80 cutters working for them, they could not get a union man "to go to bat for them" at the union meeting. A heated argument followed. Jones suggested that Mahalick should "go to bat for them". Ernest Paul, brother of the assistant foreman, spoke up and said: "You had better not send Mahalick, as the boys do not like him . . . He does not belong . . . is not a member of the Union . . . and you know that." Thereupon, Ernest Paul suggested that Tremont go, but the latter declined.

On June 25, 1935, the morning after a union meeting, Jones approached Tremont again, pressing him to disclose the names of the girls in the sewing department who belonged to the Union, which Tremont refused to do. Later the same morning, William Paul, with paper and pencil in his hand, reiterated Jones' request for the names, but again Tremont refused. Thereupon Paul again implored him to think of some names, saying that he would return for them in a short time. About 9 a. m. that morning Mary,⁷ one of Tremont's stackers, told him that Jones had found out who the girls were, but did not state the source of her information.

On the evenings of July 8 and 9, 1935, the Union held meetings. Prior to each of these meetings Jones approached Tremont and asked him if he was going to attend them. Upon receiving a negative reply and no information from Tremont in answer to his inquiries, Jones said: "Why don't you go up?" Tremont replied: "No, I am too busy, I cannot get up." After a private conference with Roy Kerr, another employee, on July 9, 1935, shortly before the union meeting,

⁷ The record does not disclose Mary's full name.

Jones came back to Tremont saying: "Well, the boys took a strike vote last night." Thereupon Tremont queried: "They did?" Jones continued: "Yes, it looks pretty bad . . . They are going to make a mistake . . . You know, that is an awful thing. You know, I had a brother that was in a strike down here at Wallworth's, and he never could get a job again, and he had to move all the way to California. There are some more around town that could not get any jobs in these factories."

Tremont testified that prior to July 9, 1935, Jones, after every union meeting, would ply him with questions about what was said at the meeting, but met with no success.

B. The discharges

Marion McCullough was employed by the respondent as a leather cutter for about 10 years prior to July 5, 1935, except for an absence of one month in 1929, and of one year during 1932-33 when he went to Pennsylvania to take care of his sick uncle. On about March 4, 1935, McCullough, having become a member of the negotiating committee of the independent organization, an organization of workers in the respondent's factory, participated in a conference with the respondent's representatives about rates of pay and conditions of employment. He was very active in soliciting members and organizing the Union, of which he was the first vice president. He served on the negotiating committee and conferred with the respondent's representatives several times. The respondent also knew of his other union activities, having received its information from two unfaithful union members.

It is significant to note that prior to his first conference with the respondent's representatives, McCullough was given the best grades of gloves to work on, but thereafter was tendered a poorer grade. Furthermore, Jones, his foreman, began to scrutinize his work more carefully after the conference than before.

On June 28, 1935, there was a general lay-off of employees, and on the following pay-day, July 5, 1935, McCullough went to the factory to get his pay for the week prior to the lay-off, it being the respondent's custom to pay its employees one week after the week in which the pay is earned. Accompanying the pay check was a slip instructing McCullough to report to his foreman. William Paul, assistant foreman, notified him that his services were no longer required. When McCullough inquired as to the reason, Paul told him that the number of employees would be reduced when the plant reopened.

On the following day, July 6, McCullough saw White, who had been one of the respondent's representatives at the conference with

the negotiating committee on which McCullough had served. White told him there was no fault with his work, repeating the foreman's statement about the reduction of the force, and suggested that he look for another position. When McCullough asked White if his membership in the Union had anything to do with his discharge, White became very excited and said: "I don't want to hear anything about that organization. Don't mention union to me because I am not interested in it."

A few weeks later McCullough received a letter from the respondent requesting the return of his group insurance policy and containing as a statement of the reasons for the return of the policy, "indefinite lay-off." The Union had applied for McCullough's reinstatement on July 9, 1935, and at various times thereafter. At the date of the hearing he neither had been recalled to work nor had he obtained any other regular or substantially equivalent employment. McCullough's work as a glove cutter was of the highest grade. A comparison of his work with that of his colleagues shows that his was always above par. When a night shift was put on in April 1934, the respondent picked the "cream of the crop", dependable and well qualified workers, skilful enough to work without a foreman. McCullough was in that select group. After a few months on the night shift, McCullough grew tired of night work and asked to be transferred to day work. William Paul, who had then been transferred to the night shift, pleaded with him, "stick it out with me at night. . . . You have proved very dependable and we would like to have you stay on here so it will make it that much easier for me."

After McCullough's discharge, no new outside help was hired in the leather cutting department, but instead a lower and less skilful grade of cutters, known as tip cutters, were promoted to be glove cutters in the leather cutting department, and new men from the outside were hired as tip cutters. Prior to this time it had been the custom of the respondent, when new glove cutters were needed, to hire new men and break them in as glove cutters.

Jerry Barry was a leather cutter and had been employed by the respondent from January 1927 to October, 1931, when he took a voluntary lay-off to find a better paying position. He was recalled to work for the respondent in August 1932, and worked as a leather cutter up to June 28, 1935, with the exception of a few seasonal lay-offs. He became an active member of the independent organization in February 1935, and of the Union in May 1935. He was active in soliciting members for the Union, participated as a member of the negotiating committee in conferences with the respondent's officers, and was particularly prominent at the meeting of May 20, 1935, when he was called upon by Thomas Blair, the production manager of the respondent, to summarize the employees' grievances.

About June 20, 1935, Barry and White had some discussion about conditions in the factory, in the course of which White said: "it would be a good thing for the boys to decide what they expected to do with reference to the things that did not satisfy them." To which Barry replied: "I think the boys and girls were justified in their action."

On June 28, the day of the closing of the factory for the seasonal lay-off, Barry was called to White's office and was informed that Hayden Lysle, a clerk at the factory, had been checking his work for the last 30 days and had found that his production had been below par during that period. White further told him to look for work elsewhere. Prior to this he had never been warned or criticised about his work. It is important to note that the checking of Barry's work had started on about May 20, the day Barry had appeared as a member of the negotiating committee to discuss working conditions with White and others.

Disheartened and discouraged because of what White had told him, Barry did not return to the plant on July 5, the next pay-day, but sent one of his children to get his pay. Barry testified that about eight to 10 days after June 28th, he received from the respondent a written notice of the termination of his employment. Upon the basis of this testimony we find that Jerry Barry was officially discharged on about July 8, 1935.

As in the case of McCullough, upon the reopening of the plant, a lower and less skilful grade of cutters, known as tip cutters, were promoted to be glove cutters in the leather cutting department, work in which Barry was more experienced, and new men were hired as tip cutters. It is unlikely that the work of a man employed by the respondent as long as Barry had been, would fall off so badly in a 30-day period to warrant his discharge and the substitution of a man inexperienced in that type of work. The Union had applied for his reinstatement on July 9, 1935, and at various times thereafter. At the time of the hearing he neither had been recalled to work by the respondent nor had he obtained any other regular or substantially equivalent employment.

Grace Bremmer was employed by the respondent as a leather sorter for two and one-half years. During that period she had never been laid-off except for seasonal lay-offs. Of the four girls employed at leather sorting Grace Bremmer had worked there longest. She joined the Union on May 31, 1935. On about June 15, 1935, Jones, her foreman, asked her to disclose the names of the girls who were attending the union meetings, but she refused. Thereupon, Jones proceeded to tell her that unions would do her no good, that they just took money from her, and related to her the incident of his

brother who had lost his job with another company because he had joined a union. In this manner he attempted to persuade her to refrain from union activities.

About July 8, 1935, Jones sent for Grace Bremmer and Anna Scholes, another leather sorter and a member of the Union, and informed them that all the leather sorters would be dismissed. Of the other two leather sorters, one quit on June 28, but the other was retained.

Anna Scholes, who was junior to Grace Bremmer in point of service, was recalled to work when the factory reopened in November 1935. Grace Bremmer testified that Anna Scholes told her that on July 9, 1935, the day after their discharge, she saw Jones, who advised her that if she quit the Union, she could have her job back when operations were resumed. Thereupon, Anna Scholes ceased to be a member of the Union.

In January 1936, Ingebord Anderson was hired to work in the sample department where Grace Bremmer worked before she became a leather sorter. Miss Anderson was not an employee of the respondent at the time of the June 28th lay-off, but had worked for the respondent for a time five or six years prior to the lay-off. Grace Bremmer, upon hearing of this, went to White and applied for reinstatement. White told her that her name was still on the books. Nevertheless, at the time of the hearing she had neither been recalled to work nor had she obtained any other regular or substantially equivalent employment.

Jess Harlan was employed by the respondent as a husker cutter from April 1929 until 1931, when he was laid off for about a year. He was recalled to work as a husker cutter for the respondent in June 1932. In September 1932 he was employed as a sweeper in the sewing room, and worked there until about six weeks before his lay-off on June 28, 1935, when he was transferred to the leather room as a sweeper. He was an active member and trustee both of the independent organization and the Union, and served on different committees. About a week after the lay-off of June 28th, Jones called Harlan and told him that the factory force would be cut and requested him to turn in his group insurance policy. Harlan refused. On about July 20, 1936, he received an official statement informing him that his employment was terminated and to send in his group insurance policy, which he refused to do. The Union had applied for his reinstatement several times after July 20, but at the time of the hearing he had not been recalled to work.

It is material to point out that about six weeks prior to the lay-off on June 28, Harlan was transferred from his position in the sewing room to a position in the leather room, and Joe Boomeneck, a new

man, was hired to take his job as a sweeper in the sewing room. We are convinced that Harlan's transfer and the hiring of another man to replace him in his position in the sewing room was made in anticipation and preparation of his later discharge.

No evidence was offered to sustain the allegation with respect to the refusal to reinstate Nick Dragolovich, and the evidence offered regarding the discharge of Lee Brandy and Joe Dragolovich is insufficient to warrant a finding that they were discharged or refused reinstatement because of their union activities. The allegations of the complaint with respect to Nick Dragolovich, Joe Dragolovich, and Lee Brandy will therefore be dismissed.

We find that Marion McCullough, Jerry Barry, Jess Harlan, and Grace Bremmer were discharged for union affiliation, activities and associations and that by such discharges the respondent has discriminated in regard to hire and tenure of employment and has thereby discouraged membership in a labor organization.

We find that Marion McCullough, Jerry Barry, Grace Bremmer, and Jess Harlan were employees of the respondent at the time of their discharge, ceased work because of an unfair labor practice, and at the time of the hearing had not obtained any other regular and substantially equivalent employment.

C. The refusal to bargain collectively

1. The appropriate unit

The complaint alleges that the employees of the respondent in the machine shop, sewing, receiving, stock, and shipping rooms, cloth cutting, leather cutting, riveting, cuff, and finishing departments constitute a unit appropriate for the purposes of collective bargaining. The respondent does not assert that any other unit is the proper one. All employees in the afore-mentioned departments, excepting supervisory and clerical employees, are eligible to membership in the Union. They constitute a group engaged in the actual production of gloves and mittens and are regarded by themselves as a distinct unit. The activities of the workers in these departments consist of receiving of raw material, leather staking, sorting, weighing, cloth and leather cutting, riveting, sewing, finishing, labeling, checking, packing, and shipping.

A unit composed of the employees in machine shop, sewing, receiving, stock, shipping, cloth cutting, leather cutting, riveting, cuff, and finishing departments, hereinafter called the production employees, excepting supervisory and clerical employees, would insure to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuate the policies of

the Act, and constitute a unit which is appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. Representation by the Union of the majority in the appropriate unit

Taylor, general organizer of the International Glove Workers' Union, testified that T. R. Stokes, president of the respondent, told him that there were approximately 382 production employees employed by the respondent during the latter part of May 1935. Orval Hedburg, financial secretary and treasurer of the Union and an employee of the respondent for the last 17 years, testified that the respondent employed about 382 production employees just before the lay-off on June 28. According to the financial secretary's records, which were produced at the hearing, 202 of the respondent's production employees were members of the Union on August 8, 1935. The number of union members increased to 269 on November 15, 1935, shortly after the settlement of the strike and the reopening of the plant, which will be discussed below.

We therefore find that on August 8, 1935, and at all times thereafter, the Union was the duly designated representative of the majority of the employees in the appropriate unit, and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain

On July 9, 1935, a committee of the Union and Taylor, general organizer of the International Glove Workers' Union, sought a conference with Stokes, the respondent's president, but were referred to White, superintendent of the respondent's Kewanee plant, who met them together with other officials of the respondent. The committee claiming to be the chosen representative of the workers employed at the respondent's Kewanee plant, requested the reinstatement of the discharged employees, the elimination of the Bedeaux System, and presented a proposed agreement relating to conditions of employment. The respondent's representatives were not disposed to discuss the discharges and reinstatement of the employees named in the complaint. They stated that the respondent knew more about who was or was not qualified to work for the Company and that it was the Company's choice to employ whomever it wished. However, White agreed to present the agreement to the higher officers of the respondent and promised a reply on July 13. On that day

the committee called for a reply, was told that the respondent would not sign an agreement, and received the following statement from White:

Under our interpretation of the Wagner Labor Bill we question our legal right or obligation to sign any written contracts or agreements of this kind, hence are returning it to you without signature or any action on our part in respect to its provisions.⁸

On July 13, 1935, Taylor sent a letter to Stokes stating that the Union construed the action of the respondent as a refusal to negotiate conditions of employment with the representatives of its employees.⁹

A course of correspondence followed, the essence of which was that the respondent, while questioning the Union's representation of a majority of the respondent's employees, was unwilling to negotiate with the Union as the exclusive representative of its employees, even if the Union did represent a majority.¹⁰

Because of the respondent's refusal to bargain with the Union and its refusal to reinstate the employees discriminatorily discharged, a strike was called at the Kewanee plant on August 5, 1935, commencing on August 8, and lasted until October 16, 1935. As stated above, by August 8, 1935, 202 out of 382 production employees had become members of the Union, and had designated the Union as their representative for purposes of collective bargaining.

On September 8, 1935, at a meeting between the strikers' committee of the Union and the respondent's representatives, at which was present Harry Scheck, a conciliator of the United States Department of Labor, Stokes claimed that the Union could not bargain for all the employees because it was unfair to the employees who were not members of the Union. He further stated that the respondent would bargain with the Union as to its members, but would refuse to bargain with the Union as the exclusive representative of all the production employees. During this conference Stokes neither challenged nor denied that the Union represented a majority of the production employees.

At a meeting on September 24, 1935, at which Taylor and David R. Clarke, the respondent's attorney, were present, the questions presented were: the representation of all the workers by the Union, the Bedeaux System, the alleged rudeness and unfairness of supervisors John Jones and Clara Weiner to employees, the reinstatement of the discharged employees, and other matters presented in the agreement of July 9, which had been rejected. The respondent, through its attorney, agreed to consider the grievances against the

⁸ Board's Exhibit No. 25

⁹ Board's Exhibit No. 24.

¹⁰ Board's Exhibits Nos. 24-9, inclusive.

supervisors, and the Bedeaux System, but refused to recognize the Union as the sole and exclusive bargaining agency for all its production employees and refused to discuss the reinstatement of the discharged employees.

On October 4, 1935, there was a conference between the strikers' committee and the respondent's representatives at which Taylor and Scheck were present. Stokes reiterated the respondent's refusal to bargain with the Union as exclusive representative of all its production employees, and presented a written "Statement of Policy"¹¹ stating in part:

The Company will meet with any employee, any group of employees, or the freely chosen representatives of any group of employees for the purpose of receiving any complaints, grievances, suggestions, or requests that may be presented concerning working conditions, and will give careful and sympathetic consideration to any such.

However, this statement had been preceded by a letter of the respondent to all its employees dated September 28, 1935, in which the respondent had said, "Our Company will not recognize, deal with, or contract with the Union as the agent of all employees in our plant."¹²

When the "Statement of Policy" was presented to the Union at a meeting on October 4, 1935, the Union sent a letter to the respondent stating, "while the 'Statement of Policy' is acceptable to the membership in certain details, it does not present the opportunity for collective bargaining to which we feel we are entitled by law," and invited further discussion with the respondent.¹³ To this the respondent replied on October 7, 1935, stating that the "Declaration of policy covers fully the matter of collective bargaining", and declining a further meeting on that subject.¹⁴ On October 15, 1935, a conference was held at the office of the Governor of Illinois at Springfield at which were present the Governor, the Mayor and Police Commissioner of Kewanee, the State's Attorney of Henry County, the Adjutant General, other public officials, and representatives of the Union, of the respondent, and of nonunion employees. At this conference the respondent reiterated its refusal to recognize the Union as the sole bargaining agency, but expressed a willingness to deal with the Union as the representative of its members. As a result of this meeting the respondent agreed to reinstate all its employees, including the strikers and those discharged, without dis-

¹¹ Board's Exhibit No. 15.

¹² Board's Exhibit No. 31.

¹³ Board's Exhibit No. 35.

¹⁴ Board's Exhibit No. 36.

crimination as soon as there was enough work for all of them, to discipline supervisors Jones and Weiner, to change the Bedeaux System so that it would be acceptable to the employees, and to submit the question of the sole bargaining agency to the National Labor Relations Board. It was agreed that the "Statement of Policy" was to be accepted in lieu of a written agreement until the Board should determine the exclusive representative. Upon the presentation of this verbal agreement, the Union called off the strike on October 16, 1935, and the respondent's employees started to return to work on or about October 23, 1935.

On November 8 and 29, 1935, on December 18, 1935, and on January 28, 1936, the strikers' committee requested the respondent's officers to reinstate the discharged employees and to modify the Bedeaux System. On all these occasions the respondent, ignoring its agreement of October 15 to reinstate the discharged employees, refused to discuss their reinstatement, declaring that it was a matter for the management alone to determine. At the November 8th conference the strikers' committee charged the respondent with discrimination, and inquired why an inexperienced man who had not worked for the respondent before, had been hired in the husker department when experienced help was available. Stokes asked White, "Mr. White, do you know anything about it?" White replied, "Yes, we hired that gentleman after much discussion on it, and we decided it might be discriminating. That fellow's pay check is waiting for him." The union representatives tried to point out to the respondent the wrong it committed, but the respondent claimed that this was a management proposition and that they knew more about it than the employees.

On April 28, 1936, the respondent sent a letter addressed to all its employees, reiterating its refusal to deal with the Union as the exclusive representative of its employee.¹⁵

It is clear that the respondent, through its officers, persistently refused to recognize and to bargain with the Union as the exclusive representatives of its employees. We find, therefore, that on September 8, 1935, and at all times thereafter, 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.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced its 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 concerted activities for the purposes of

¹⁵ Board's Exhibit No. 33.

collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

IV. THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

From April 1 to June 30, 1935, there were shipped over the Burlington Railroad to the respondent's plant from points outside the State of Illinois, 115 shipments totalling 397,731 pounds, and from July 1 to October 31, 1935, 38 shipments totalling 34,460 pounds. From April 1 to June 30, 1935, the outbound shipments over that railroad from the respondent's Kewanee plant were 281 in number, totalling 358,603 pounds, while from July 1 to October 31, 1935, the outbound shipments were 213 in number, totalling but 76,938 pounds.

The respondent received from points outside Illinois, by means of the Burlington Transportation Company, a carrier by motor truck, from April 1 to June 30, 1935, 32 shipments totalling 16,365 pounds, and from July 1 to October 1, 1935, 15 shipments totalling 7,448 pounds.

The outbound shipments from the respondent's Kewanee plant to points outside the State of Illinois from April 1 to June 30, 1935, were 206 in number, and 111,494 pounds, and from July 1 to October 31, 1935, were 118 in number and 57,253 pounds.

The falling off in interstate shipments during the months of the strike indicates the restraint upon the flow of raw materials and manufactured and processed goods from and into the channels of commerce caused by the respondent's unfair labor practices.

We find that the activities of the respondent set forth in Section III 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 have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

We will order that Grace Bremmer, Marion McCullough, Jerry Barry, and Jess Harlan be offered reinstatement to their former positions. Grace Bremmer, Marion McCullough, and Jerry Barry are entitled to back pay from the date of their discharge until the respondent offers to reinstate them, less any amounts earned by them in the meantime. In view of the Trial Examiner's failure to find in his Intermediate Report that Jess Harlan was discharged because of union activities, the respondent could not have been expected to reinstate Jess Harlan after it received the Intermediate Report (June 22, 1936,) and therefore it should not be required to

pay back pay from that time to the date of this decision. However, the respondent will be required to pay back pay to Jess Harlan from July 20, 1935, the date of his discharge, to June 22, 1936, and from the date of this decision to the time of such offer of reinstatement, less any amounts earned by him during such periods.¹⁶

We have found that the respondent's production workers struck on August 8, 1935, owing to the respondent's refusal to bargain collectively with its employees and its refusal to reinstate the employees discriminatorily discharged. Since the strikers ceased work as a consequence of, and in connection with a current labor dispute, and because of the respondent's unfair labor practices, those strikers who have not obtained any other regular or substantially equivalent employment have been since August 8, 1935, and still were "employees" of the respondent within the meaning of Section 2, subdivision (3) of the Act when the strike was settled. However, when the plant reopened on October 23, 1935, the respondent employed a number of individuals who were not so employed at the time of the strike on August 8, 1935. The respondent is under a duty to reinstate the strikers to their former positions and to restore the status quo which existed prior to its commission of the unlawful acts. Therefore, we shall order the respondent to offer to those employees who were on strike on August 8, 1935, and who have not obtained regular and substantially equivalent employment elsewhere, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights or privileges; and place those for whom work is not available on a preferred list to be offered employment as it arises on the basis of seniority by classifications before any other persons are hired. Our order will also provide that employees whose application for reinstatement is refused by the respondent in violation of this order herein shall be entitled to back pay accruing from the date of the refusal of the application to the date of reinstatement, less any amount earned during that period.¹⁷

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. International Glove Workers' Union of America, Local No. 85, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

¹⁶ *Matter of E. R. Haffelfinger Company, Inc., and United Wallpaper Crafts of North America, Local No. 6*, 1 N. L. R. B. 760; *Matter of Mann Edge Tool Company and Federal Labor Union No. 18779*, 1 N. L. R. B. 977

¹⁷ *Matter of Oregon Worsted Company and United Textile Workers of America, Local 2435*, Case No. C-167, decided July 16, 1937, (*supra*, p. 36).

2. The strike of the employees was a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

3. Marion McCullough, Jerry Barry, Grace Bremmer, Jess Harlan and those who struck on August 8, 1935, are employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act.

4. The respondent, by discriminating in regard to the hire and tenure of employment of Marion McCullough, Grace Bremmer, Jess Harlan, and Jerry Barry, and each of them, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

5. All the production employees of the respondent, excepting supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

6. By virtue of Section 9 (a) of the Act, International Glove Workers' Union of America, Local No. 85, having been selected as their representative by a majority of the employees in an appropriate unit, was on August 8 and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

7. The respondent, by refusing to bargain collectively with the representatives of its employees on September 8, 1935, and thereafter, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

8. 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, subdivision (1) of the Act.

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

ORDER

Upon 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 the respondent, The Boss Manufacturing Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from 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 con-

certed activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

2. Cease and desist from refusing to bargain collectively with International Glove Workers' Union of America, Local No. 85, as the exclusive representative of all its production employees, excepting supervisory and clerical employees;

3. Cease and desist from discouraging membership in Glove Workers' Union of America, Local No. 85, or any other labor organization of its employees, by discharging and refusing to reinstate employees, or otherwise discriminating in regard to hire and tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

a. Offer to Grace Bremmer, Jerry Barry, Marion McCullough, and Jess Harlan immediate and full reinstatement, respectively, to their former positions without prejudice to their seniority, or other rights and privileges;

b. Upon application, offer to those employees who were on strike on August 8, 1935, and who have not obtained regular and substantially equivalent employment elsewhere, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges; and place those for whom employment is not available on a preferred list to be offered employment as it arises on the basis of seniority by classifications before any other persons are hired;

c. Make whole all employees who were on strike on August 8, 1935, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 4b herein, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of reinstatement, less the amount, if any, which each, respectively, earned during said period;

d. Make whole Grace Bremmer, Marion McCullough, and Jerry Barry for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each of them, respectively, would normally have earned as wages from the date of their discharge to the date of the offer of reinstatement pursuant to this order, less any amount earned by each of them, respectively, during such period;

e. Make whole Jess Harlan for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages during the

periods from July 20, 1935, the date of his discharge, to June 22, 1936, and from the date of this decision to the time of such offer of reinstatement, less any amount he has earned during such period;

f. Upon request, bargain collectively with International Glove Workers' Union of America, Local No. 85, as the exclusive representative of all its production employees, excepting supervisory and clerical employees, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment;

g. Post notices at a conspicuous place on each floor of the respondent's Kewanee plant stating: (1) that the respondent will cease and desist in the manner aforesaid; and (2) that said notices will remain posted for at least thirty (30) consecutive days from the date of posting;

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