

In the Matter of DAVID E. KENNEDY, INC. and ISIDORE GREENBERG

Case No. C-438.—Decided April 21, 1938

*Asphalt Tile and Cork Tile Manufacturing Industry—Interference, Restraint or Coercion:* opposition to outside union expressed through suggestion that employees elect committee to bargain with respondent—*Company-Dominated Union:* employees' collective bargaining committee initiated and sponsored by employer; domination of and interference with formation and administration; support; participation and representation on committee, of supervisory employees; acquiescence in unconscionable contract and adoption by individual employees; disestablished as agency for collective bargaining; contracts invalidated—*Contract:* "yellow dog", involved—*Discrimination:* discharges: for union activity and opposition to company-dominated committee—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Richard J. Hickey*, for the Board.

*Mr. J. Emil Walscheid*, of Jersey City, N. J., for the respondent.

*Isserman & Isserman*, by *Mr. Sol. D. Kapelsohn*, of Newark N. J., for Greenberg, Bulkowski, and Fitzpatrick.

*Mr. Howard Lichtenstein*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been filed by Isidore Greenberg, the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, Regional Director for the Second Region (New York City), issued and duly served its complaint dated November 9, 1937, against David E. Kennedy, Inc., New York City, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 15, 1937, the respondent filed its answer to the complaint denying that it had engaged in the unfair labor practices alleged therein, and denying that its business affects commerce, within the meaning of the Act.

Pursuant to notice, a hearing was held in New York City on November 18 and 19, 1937, before Harold R. Korey, the Trial Examiner duly designated by the Board. The Board, the respondent, and the three employees alleged to have been discriminatorily discharged

were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

During the course of the hearing and at the conclusion of the Board's case, the respondent moved to dismiss the complaint on the grounds, *inter alia*, that its business is not in interstate commerce; that the activities alleged in the complaint do not constitute unfair labor practices, within the meaning of the Act; and that the Board's failure to serve necessary parties and lack of jurisdiction to pass upon the validity of the respondent's contracts with its employees, preclude a finding that it has engaged in unfair labor practices, within the meaning of Section 8 (2) of the Act.<sup>1</sup> At the conclusion of the case, counsel for the Board moved to amend the pleadings to conform to the proof. The former motion was denied and the latter granted. These rulings are hereby affirmed.

On February 14, 1938, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in the unfair labor practices alleged in the complaint. He accordingly recommended that the respondent cease and desist from engaging in the unfair labor practices, that it reinstate with back pay the three employees found to have been discriminatorily discharged, that it cease giving recognition to, and disestablish, The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. as the collective bargaining representative of any of its employees, and that it cease giving effect to the individual contracts of employment with its employees.

On February 24, 1938, the respondent filed exceptions to various rulings of the Trial Examiner and to the Intermediate Report. The Board has reviewed the rulings of the Trial Examiner on objections to the admission of evidence and on other motions not specifically mentioned above, and finds that no prejudicial errors were committed. His rulings are hereby affirmed. The Board has also considered the exceptions to the Intermediate Report and finds them to be without merit.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The respondent, a New York corporation with its principal office and place of business at Brooklyn, New York, is engaged in the

<sup>1</sup>The respondent erroneously urges that the Collective Bargaining Committee of The Employees of David E. Kennedy, Inc., and the individual employees who signed contracts with the respondent should have been served with the complaint and notice of hearing. See *National Labor Relations Board, Petitioner v. Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*, 303 U. S. 261

manufacture, sale, and distribution of asphalt tile, cork tile, and related products. In the manufacture of its product the respondent purchases principally asbestos, cork curlings, pitch, asphalt, and cumar. Of the raw materials shipped to the respondent's plant from points outside the State of New York, a substantial part of the asbestos is shipped from Canada, pitch from Illinois, asphalt from New Jersey, cumar from Pennsylvania, and red oxide from Spain and Persia. During the 12-month period ending September 30, 1937, the respondent's gross sales amounted to \$701,681.89, approximately 60 per cent of which were made outside the State of New York.

During the month of May 1937 when the events described below occurred, the respondent had in its employ approximately 75 production workers, 5 foremen, and 20 office employees.

## II. THE ORGANIZATIONS INVOLVED

Textile Workers Organizing Committee, herein called the Union, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the production employees of the respondent, exclusive of supervisory employees.

The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. is a labor organization designed to represent all of the respondent's employees.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Formation of the Committee*

On April 18, 1937, Isidore Greenberg, one of the respondent's employees, joined the Union and initiated a campaign to organize his fellow workers. Enlisting the services of Frank Bulkowski, Thomas Fitzpatrick, and two other employees, he distributed Union application cards and solicited those of his fellow employees who he thought would not apprise the respondent of their efforts to organize. The testimony discloses that on May 19 or 20, Reb Davidson who had been so solicited, gave his Union application card to Joseph Curry, an assistant foreman. On Friday, May 21, a notice appeared on bulletin boards throughout the plant announcing a meeting of employees for the following afternoon in order to discuss "employer and employee relationships." Both Greenberg and Bulkowski were, in addition, personally advised to be present by their foreman, Thomas Barr, Sr. Although the record does not show what disposition Curry made of the card, it is a reasonable inference that he brought the activity of the Union employees to the attention of the respondent.

On Saturday afternoon after working hours, the employees, including Joseph Curry, and Edward Meyers, a foreman, assembled in the

packing room of the plant and listened to an address by David O'D. Kennedy, the respondent's president. Kennedy, reading from a memorandum he had previously prepared, called their attention to the Act, advised them of their right to bargain collectively with the respondent, and stated that he believed in the theory of collective bargaining. He pointed out that the respondent's relationship with the employees had been friendly and pleasant for many years, that the respondent "had always tried to be fair and just," and that he desired that the pleasant relationship continue. "We know that neither you nor we want to have any unsettled disagreements or loss of time in this plant and we therefore are going to make a suggestion to you which will make it possible for you to bargain with us collectively as called for in the Wagner Act."

Kennedy thereupon proceeded to outline his plan, stating that "we will be glad to bargain collectively with a committee of your fellow workers, as provided in the Wagner Act, elected by you." He agreed that if such committee were elected, he would enter into a written contract with it on behalf of the employees, "and with each one of you separately, if you so desire." Commenting on the contents of the contract, he observed that it would cover hours of work, minimum rates of pay, and "if you so desire it will also be provided that there shall be no lock-outs by us and no strikes by you, and that all disputes will be settled peacefully by discussion between ourselves, and if we cannot agree, [by] arbitration before a neutral outsider." Kennedy concluded his address with the following words:

If you desire to elect a committee, all of you who may agree to this idea may sign your name to the bottom of the letter addressed to me, stating that you have elected a committee, and giving the names of its members. In order to save you trouble, I have had this letter made up in blank so that if you wish to do so you may insert the names of the committee and your signatures in the proper place. You will of course realize that I do not ask you to sign this letter, you may do as you please and even if no arrangement results from this we will still continue to operate as we have heretofore. I am giving this letter to Mr. Barr, Jr. [assistant factory manager] and you may get it from him if you wish to use it.

At the conclusion of the speech Greenberg arose and suggested that the election be postponed for a week. Kennedy indicated his approval of the suggestion and left the meeting. Thereupon Meyers proposed that a temporary committee be elected to determine the steps to be taken to organize, and he suggested, over Greenberg's protest,

that the letter in Barr, Jr.'s possession be obtained. A committee of seven employees, including Greenberg, Meyers and Curry, was elected and the meeting disbanded.

As he left the meeting, Greenberg met both Barr, Jr., and Barr, Sr., Barr, Jr., gave him the letter and asked whether another employee, Parascendo, had been chosen for the committee. Barr, Sr., commenting on the letter, said, according to Greenberg: "I think this is a good thing. The men ought to sign it."<sup>2</sup>

On the following Monday Greenberg, during the lunch period and before and after working hours, expressed the opinion to his fellow workers that Kennedy was attempting to form a "company union" and exhorted them to join the Union rather than follow Kennedy's plans. As a result of Greenberg's admonitions, the employees agreed to hold a meeting on the following Saturday afternoon in Prospect Park, several blocks from the plant. Greenberg testified that on Tuesday, he asked Kennedy for permission to post notices of this meeting on the respondent's bulletin boards, that Kennedy refused to grant such permission and stated that another meeting would be held in the plant the following afternoon, May 26, at 4:30 p. m., at the end of the day shift. Kennedy, denying that he had withheld the use of the bulletin boards, testified that he knew nothing of the meeting proposed for the following afternoon, and was not even aware that such meeting was held. Kennedy's testimony, however, is unconvincing. On the same day, notices of the meeting to be held the next afternoon appeared on the bulletin boards, and the meeting held pursuant to the notice was attended by practically every employee in the plant. From all the evidence we are satisfied that the meeting of Wednesday, May 26, was planned by Kennedy, and that he refused Greenberg's request for permission to post notices of a meeting for the following Saturday.

Greenberg presided over the meeting on Wednesday afternoon which was attended by four foremen and one office employee, as well as by all of the production employees. Greenberg first proposed that supervisory employees be excluded from the meeting but his motion was defeated after a vote by show of hands. Meyers then proposed that a committee be elected under Kennedy's plan, and again over

<sup>2</sup> With convenient spaces left for names of committeemen and signatures of employees, the letter read as follows:

*Attention Mr. David O'D. Kennedy, President.*

GENTLEMEN: We, the undersigned employees of David E. Kennedy, Inc, hereby notify you that we have this day elected a committee of five of our fellow employees as our representatives in collective bargaining with you. The members of this committee are as follows:

We authorize these representatives to enter into and sign a contract with you, provided it contains substantially the provisions outlined to us by the Management.

We also hereby notify you that we have not authorized any other group to represent us in collective bargaining with you as our employer.

Greenberg's objection that Kennedy's plan was illegal, a committee of five was chosen to consider Kennedy's proposal although authority to enter into a contract with the respondent was withheld. Again Greenberg, Meyers, and Curry and five others were elected to the Committee, and the meeting adjourned.<sup>3</sup>

On the following morning when the men came to work they were met at the time clock by Engels, a foreman, who motioned them into the office. Fitzpatrick testified that when he entered the office, another employee, Sicigliano, offered him a copy of the letter prepared by Kennedy, and asked him to sign it. Fitzpatrick pointed out that Greenberg's name and that of another employee, Wakeham, had been omitted from the committee and that the names of two other employees, Parascendo and Heims, had been substituted. He accordingly refused to sign the letter and left the office. Greenberg testified that although he was not invited into the office, nevertheless he entered and noticed that the letter contained the names of two committeemen who had not been elected the previous afternoon. Greenberg pointed out the error and also stated that the committee had not been authorized to sign an agreement with the respondent. Apparently, however, no steps were taken to correct the letter, and it was later submitted to Kennedy bearing the signatures of a large majority of the employees, including those of several foremen. While in the office Greenberg also saw a petition on the desk subscribed with the names of several employees to the following effect:

We the undersigned employees of David E. Kennedy, Inc. hereby request the management to discharge I. Greenberg because he is a busybody and general nuisance and is a trouble maker.

Kennedy testified that on the same morning, when he arrived at the plant he found the letter and the petition on his desk, both signed by a majority of the employees. After discharging Greenberg, he called a meeting of the committee named in the letter.<sup>4</sup> Although the space thereon for the names of the members showed that erasures had been made, apparently where the names of Parascendo and Heims had been substituted for those of Greenberg and Wakeham, Kennedy admitted that he did not question the validity of the letter or whether the men who met with him were the duly elected representatives of the respondent's employees.

That the negotiations which took place and were concluded that same day were perfunctory plainly appears from Kennedy's own description of them. He testified that the committee requested vacations with pay, but withdrew the request when he pointed out that

<sup>3</sup> Immediately after the voting, the men employed on the night shift returned to work, Engels, a foreman, announcing that they would make up the lost time.

<sup>4</sup> The discharge is described below.

the respondent had already subscribed for life insurance on behalf of the employees and could not afford to grant vacations. The committee proposed time and a half wage rates for overtime but compromised on time and a quarter. He further testified that it was agreed to continue the wage rates then prevailing as minimum rates.

That evening, with the assistance of his attorney, Kennedy prepared a contract which embodied the terms outlined above. In addition, the contract provided that the respondent would not lock out any of its employees because of any dispute arising thereunder. The employees in turn agreed not to go out on strike during the period of the contract, to June 1, 1942. A system of arbitration of disputes was included with the proviso that the discharge of any employee was not subject to arbitration. Paragraph "Seventh" which prescribed the rights of the employees, read as follows:

Any Employee has the right to join any union of his own choosing, or to refrain from joining any union. The employees, or any of them, shall not and have not the right to demand a closed shop or a signed agreement by the Employer with any union. This does not in any way restrain the Employees from having a union representing them or advising them in collective bargaining, and the Employer has the absolute and unqualified right to hire or discharge any Employee or Employees for any reason or for no reason and regardless of his or their affiliation or non-affiliation with any union. The Employer agrees that no Employee will be discharged because of legitimate union activities or affiliation with any union. . . .

The next morning the committee signed the contract as The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. and distributed copies for the signatures of individual employees. On the same day, during working hours, many of the employees signed, and at the time of the hearing all but two of them had become individual parties to this contract.

The evidence clearly establishes that the course of events described above, following the early attempt of the employees to organize for the Union, was supervised and directed by the respondent. The respondent urges that the meeting called on May 21 and the speech by Kennedy were inspired by the desire to inform the employees of their rights under the Act. The speech itself, however, is eloquent testimony that the respondent desired rather to initiate the form of collective bargaining that it preferred. The form letter it had previously prepared and the suggestion that the employees elect a bargaining committee from their own number conclusively shows that it was chiefly interested in discouraging "outside" employee representation and offsetting the Union activity which had come to

its attention 2 days before. Under no possible interpretation can Kennedy's speech be described as a fair presentation of the rights guaranteed employees under the Act; the very omissions in the speech indicate the respondent's prejudice. Kennedy admitted that he did not mention the right of the employees to become members of an outside union, their right to select outside representatives, or their right to organize free from the respondent's interference. In effect they were told only of the right to bargain collectively through employee representatives, and advised to follow the plan offered by Kennedy.

After the respondent had presented the plan, its adoption was carefully directed by supervisory employees. As shown above, foremen attended the two meetings of employees and were represented upon both committees elected by them. Although the record does not show who changed the names of committeemen on the letter presented to Kennedy, it is clear that the respondent was not concerned whether the men whose names appeared thereon had been duly elected. Kennedy made no effort to check the validity of the letter, even after Greenberg explained that he and Wakeham had been elected but that their names had been erased from the letter.

The contract signed by the committee and the individual employees unquestionably did not result from the processes of collective bargaining which the Act contemplates. It is apparent from the record that the committee, with two foremen included in its personnel, did no more than go through the form of bargaining on May 27. Its acquiescence without protest on the following day to a form of contract which deprived the employees of the rights guaranteed by the Act confirms our conclusion that the committee acted as the tool of the respondent rather than as the representative of the employees.

Kennedy testified that he prepared the contract with the aid of his attorney, from several forms submitted to him by other employers in the Borough of Brooklyn. The contract as finally drafted and adopted, however, presents a remarkable similarity in language and effect to the contract which this Board reviewed in *Matter of Atlas Bag and Burlap Company, Inc.* and *Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union.*<sup>5</sup> In that case, the employer sought the advice of L. L. Balleisen, industrial secretary of the Brooklyn Chamber of Commerce, who prepared a letter addressed to the employer from its employees in a form similar to the letter prepared by Kennedy for the employees herein, which notified Kennedy that a collective bargaining committee had been elected.

<sup>5</sup> 1 N. L. R. B. 292. See also *Matter of The Jacobs Bros. Co., Inc.* and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620, in which a similarly worded contract appears.

Although Kennedy denied that he had consulted Balleisen in the preparation of the contract, it is clear from a comparison of the events that occurred and the contract that resulted herein, with the events and the contract described in the Board's Decision cited above, that Kennedy must have had the benefit of Balleisen's anti-union campaign methods. The identical language and provisions of both contracts cannot be ignored. In that case Balleisen also prepared the contract which the Board in its decision described as follows:

The contract deprives each employee who signs it of the right to strike . . . , of the right to demand recognition of any union by the employer, and of the right to question discharges for any reason or no reason regardless of his affiliation or non-affiliation with any union. Despite the lip-service rendered by the terms of the contract to the right of an employee to join any union of his own choosing, the agreement deprives each employee subscriber of the fundamental rights inherent in union affiliation and activity—the right to union recognition, which means the right to collective bargaining, the right to concerted activities for mutual aid or protection, which is guaranteed to employees in Section 7 of the National Labor Relations Act, and the right to protest against the employer's exercise of his most powerful anti-union weapon, discharge for union affiliation or activity. It would be hard to devise a more patently anti-union or "yellow dog" contract, or one more discouraging to membership in a labor organization.

The quotation above is equally applicable to the contract in issue in this case.

We find that the respondent, by its activities described above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; has dominated and interfered with the formation and administration of The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. and has contributed support to it; and that by its conduct it has discouraged membership in the Union. We further find that the contracts described above are unlawful and void.

### B. *The Discharges*

*Isidore Greenberg* had been employed by the respondent since September 1, 1935, and at the time of his discharge on May 27, 1937, was working as a sample maker earning 52 cents per hour and averaging 26 dollars a week. During the course of his employment Greenberg had received three increases in wages, the last one having been granted late in April 1937.

As described above, Greenberg was the most active advocate of the Union cause. He had first broached the subject of Union organization in the respondent's plant, had distributed Union application cards and leaflets, and had made every effort to prevent Kennedy's plan from materializing.

Greenberg's version of his conversation with Kennedy preceding his discharge is entirely plausible. Shortly after he had commenced working on May 27, Kennedy summoned him to the office, showed him the petition requesting his discharge, and asked him to resign, at the same time observing that Greenberg was one of his best workers but that the petition left him no alternative. Greenberg protested that the petition was preposterous. "I said it did not seem logical to me that the night before at a meeting of the employees of the company the men should elect me on a committee to speak to Mr. Kennedy, and the following morning they should suddenly sign statements asking Mr. Kennedy to fire me." Greenberg refused to resign and Kennedy thereupon discharged him.

Kennedy denied that the petition had any bearing upon his action but that he had discharged Greenberg because his work had been unsatisfactory during the past 2 months and because he had reported for work late on the previous morning without having telephoned the office and offered an excuse for his tardiness. He further testified that the rule regarding unexcused latenesses was inflexible and that a copy of the rule had remained posted on the bulletin board near the time clock for many years. Although Greenberg admitted having reported late for work on the previous day, he testified that he had telephoned the office on that morning. He further contended that the rule regarding lateness provided for a 3-day lay-off and not a discharge.

The Trial Examiner, who had the opportunity to observe the witnesses while they testified, found that Greenberg had been discharged because of his union activities, thus resolving the conflict of testimony in his favor. In the light of all the evidence we are satisfied that the Trial Examiner's finding was proper. Kennedy did not deny showing Greenberg the petition requesting his discharge and it was undoubtedly used as one reason for his dismissal. At the same time the respondent had received notice of the election of the committee and was fully aware that Greenberg had been elected to it. Prepared to enter into an agreement with a rump committee, the only obstacle to the culmination of the respondent's plan for "collective bargaining" appeared to be Greenberg, who had previously demonstrated his opposition to it and who the respondent must have known would have combatted this final unlawful action. It is apparent that the respondent desired to discharge him in order to avoid further opposition and that it advanced other grounds for his dismissal in order

to conceal its true motive. We find that Isidore Greenberg was discharged by the respondent because of his activities on behalf of the Union and his opposition to the form of collective bargaining presented to its employees by the respondent.

Greenberg found other employment on July 1, 1937, at 19 dollars a week. On September 1, his wages were increased to 25 dollars a week which he was earning at the time of the hearing. Greenberg desires reinstatement to his former position with the respondent.

*Frank Bulkowski* was employed by the respondent in January 1937, as a general repair man at 40 cents per hour. Several days later he was transferred to the packing department at 46 cents per hour and on April 15 given a wage increase of an additional 4 cents per hour. On May 3 Bulkowski was transferred back to the mastic department with an increase in wages to 55 cents per hour, and on May 20 he received another increase, bringing his total hourly wage rate to 60 cents.

As described above, Bulkowski, a Union member, had actively assisted Greenberg in attempting to organize the employees for the Union. He distributed Union application cards and at the meeting of May 26 was one of the few employees who voted to exclude supervisory employees. He had refused to sign the letter of May 27 to the respondent, and after the discharge of Greenberg he continued to meet him outside the plant and at his home in order to plan further Union activity among the respondent's employees. Although Bulkowski signed the contract with the respondent, his testimony indicates that he first considered it for several days and finally signed it in the belief that it was necessary to safeguard his job.

•Bulkowski testified that he was discharged by his foreman, Downer, without explanation, on July 3, 1937. He returned on July 7 and asked Tyson, the respondent's secretary and treasurer, the reason for his discharge, but Tyson could give him no explanation, stating that he did not even know of the discharge. Bulkowski thereupon left the plant and did not return thereafter. Neither Downer nor Tyson was called by the respondent to deny this testimony, nor did the respondent controvert Bulkowski's additional testimony that at the time of his discharge, the employees in the mastic department commenced working 9 hours a day, 1 hour more than their usual day's work.

Barr, Jr., denying that Bulkowski was discharged, testified that he laid him off on July 6 for 3 or 4 weeks in order to make room for the transfer of three skilled employees from the cork slab department in which operations had been temporarily discontinued; and that he thereafter neglected to call him back since he had received a letter from another company informing the respondent that it had hired Bulkowski and requesting a reference on his behalf.

An analysis of the record clearly establishes the discriminatory nature of Bulkowski's discharge. His employment record, including the numerous wage increases he received, testifies to his efficiency as an employee. In the light of his excellent record it is not convincing that the respondent preferred to operate the mastic department on an overtime basis rather than retain Bulkowski's services. The respondent urges that the fact that in applying for a new position, Bulkowski stated that he had been laid off by the respondent because of lack of work, proves that he was in fact laid off for that reason. It is not likely however, that in applying for a new position, he would have had the temerity to confess that he had been discharged for his union activity. The very fact, moreover, that Bulkowski did seek another job would indicate that his employment with the respondent had been definitely terminated. Finally, in connection with the testimony regarding the discharge of Fitzpatrick discussed below, the respondent contended that temporary lay-offs are not indicated on an employee's record card. Yet Barr, Jr., testified that on July 6, the day he claimed that Bulkowski was laid off, he inserted that notation on the card. The inference is inescapable that Barr had thus sought to cloak the true reason for dismissing Bulkowski. From all the evidence we are satisfied that the respondent discharged Bulkowski on July 3, 1937, because of his activities on behalf of the Union.

A week after his discharge Bulkowski secured employment at 17 dollars per week. He desires reinstatement to his former position with the respondent.

*Thomas Fitzpatrick* had been employed by the respondent since 1924 and at the time of his discharge was working in the cork tile department earning 55 cents per hour and averaging between 25 and 26 dollars per week.

Fitzpatrick, who was the oldest in point of seniority among the other employees in the department, testified that he was laid off on July 16, 1937, by Barr, Jr., who told him that business was slow and that he would be notified when his services were again required. Fitzpatrick was never recalled to work.

Fitzpatrick, together with Greenberg and Bulkowski, was active in soliciting members for the Union. With Bulkowski he had voted to exclude supervisory employees from the meeting of May 26 and had conferred with Greenberg after the latter's discharge in order to continue the organization of the respondent's employees. Fitzpatrick, after some delay, had also signed the contract with the respondent in the belief that a refusal to sign would result in his discharge.

As in the case of Bulkowski, the respondent's contentions with respect to Fitzpatrick's lay-off are not supported by the record.

Barr, Jr., testified that he acted as foreman of the cork department while his father, Barr, Sr., the regular foreman, was on his vacation. Finding that he was not securing Fitzpatrick's cooperation during his father's absence, and acting pursuant to Kennedy's suggestion, he laid off Fitzpatrick for a period of 2 weeks, until Barr, Sr., should return. He further testified that Fitzpatrick did not thereafter apply for reinstatement. Barr, Jr., admitted, however, that contrary to the usual practice, Fitzpatrick was paid in full on the last day he worked instead of being required to return the following week for his last week's wages.

Fitzpatrick testified that the cork tile department was busy both at the time of his discharge and thereafter, and that the employees therein regularly worked overtime during this period. This testimony was not denied. Under the circumstances it is likely that the respondent would have notified Fitzpatrick, who had been employed by it for a period of 13 years, to return, if his lay-off had been considered only temporary.

From all the evidence it is clear that the respondent seized upon a pretext to conceal the motive for this discharge. In commenting upon Barr, Jr.'s testimony, the Trial Examiner stated in his Intermediate Report: "From the manner in which Thomas Barr, Jr. testified, his statements cannot be seriously considered; it could readily be discerned that there was no real reason for the discharge of Fitzpatrick other than his union activities." We find that the respondent discharged Fitzpatrick on July 16, 1937, because of his activities on behalf of the Union.

Up to the time of the hearing Fitzpatrick had not secured other employment and he desires to be reinstated.

### *C. Conclusions regarding the discharges*

We have found that Greenberg, Bulkowski, and Fitzpatrick were discharged for the reason that they joined and assisted the Union. It is significant that these three employees were the most active exponents of the Union and were most bitterly opposed to the collective bargaining committee fostered by the respondent. The discharges not only amounted to an unlawful discrimination against these men but also constituted interference, restraint, and coercion of all the employees in the exercise of their right to self-organization guaranteed in Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with its operations described in

Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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

#### CONCLUSIONS OF LAW

1. Textile Workers Organizing Committee and The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Isidore Greenberg, Frank Bulkowski, and Thomas Fitzpatrick, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc., and by contributing support to that organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

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

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

#### ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, David E. Kennedy, Inc., Brooklyn, New York, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the administration of The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc., or with the formation or administration of any other labor organization of its employees and from contributing financial or other support to The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc., or any other labor organization of its employees;

(b) From discouraging membership in Textile Workers Organizing Committee or any other labor organization of its employees by discrimination in regard to hire or tenure of employment;

(c) From giving effect to the contract made with The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. on May 28, 1937, and to the individual contracts made with its employees on that day and thereafter;

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

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

(a) Offer Isidore Greenberg, Frank Bulkowski, and Thomas Fitzpatrick immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole Isidore Greenberg, Frank Bulkowski, and Thomas Fitzpatrick for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less any amount earned by each during that period;

(c) Withdraw all recognition from The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc., as a representative of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc., as such representative;

(d) Personally inform in writing each of its employees who has entered into the individual contract of employment, that the obtaining of such contract by the respondent constituted an unfair labor practice within the meaning of the National Labor Relations Act, and that therefore the respondent is obliged to discontinue such contract as a term or condition of employment and to desist from in any manner enforcing or attempting to enforce such contract;

(e) Immediately post notices in conspicuous places throughout its plant and maintain such notices for a period of thirty (30) consecutive days, stating (1) that the respondent will cease and desist as aforesaid; (2) that the respondent withdraws and will refrain from all recognition of The Collective Bargaining Committee of The Em-

ployees of David E. Kennedy, Inc., as a representative of its employees and completely disestablishes it as such representative; and (3) that the contract made with The Collective Bargaining Committee of The Employees of David E. Kennedy, Inc. on May 28, 1937, and the individual contracts made with its employees on that day and thereafter are void and of no effect;

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