

IN the Matter of RONNI PARFUM, INC., and EY-TEB SALES CORP. and UNITED MINE WORKERS OF AMERICA, DISTRICT NO. 50, CHEMICAL DIVISION, SUCCESSOR TO CHEMICAL WORKERS LOCAL INDUSTRIAL UNION NO. 33, AFFILIATED WITH C. I. O.

Case No. C-435.—Decided July 18, 1938

Perfume and Eye Preparations Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization, threats of retaliatory action—*Strike:* precipitated by refusal to sign contract with majority representative—*Company-Dominated Union:* domination of and interference with formation and administration; financial and other support; participation and representation of supervisory employees, on committee; coercion to join, disestablished, as agency for collective bargaining—*Contract:* with company-dominated union, invalid; employer ordered to cease giving effect to—*Election:* consent, not true reflection of desires of employees, when affected by employer's acts of intimidation and persuasion—*Discrimination:* discharges, for union activity and opposition to company-dominated committee—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Will Maslow, for the Board.

Mr. Abraham B. Hertz, of New York City, for the respondents.

Mr. Richard Meigs, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges filed by United Mine Workers of America, District No. 50, Chemical Division, successor to Chemical Workers Local Industrial Union No. 33, herein called the Union, the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, Regional Director for the Second Region (New York City) issued its complaint dated November 30, 1937, against Ronni Parfum, Inc., herein called Ronni, and Ey-Teb Sales Corp., herein called Ey-Teb, New York City, herein collectively called the respondents. The complaint alleged that the respondents have engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 30,

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1937, the complaint and accompanying notice of hearing were duly served upon the respondents, upon the Union, and upon the company union, herein called the Company Union,¹ a labor organization alleged in the complaint to have been dominated by the respondents. No written answer was filed but it was stipulated at the hearing between counsel for the respondents and counsel for the Board that all the allegations of the complaint would be deemed to be denied by the respondents, except the allegations of corporate existence and those pertaining to the business of the respondents, which were admitted. Counsel for the Board expressly waived the filing of a verified answer by the respondents.

Pursuant to notice, a hearing was held in New York City on December 6 and 7, 1937, before Henry W. Schmidt, the Trial Examiner duly designated by the Board. The Board was represented by counsel. Counsel for the respondents appeared and later withdrew from the hearing in the manner hereinafter set forth. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the opening of the hearing counsel for the respondents requested a 3 weeks' adjournment, on the ground that his two principal witnesses, Morin and Unterman, president and vice president respectively of the respondent corporations, had made arrangements long prior to the issuance of the complaint in this proceeding to go to Miami, Florida, the former on a combined business and pleasure trip and the latter to visit a wife and sick child. Counsel for the respondents informed the Trial Examiner that both men had left for Miami, Florida, on the night of December 5, 1937, immediately prior to the hearing in this proceeding. Statements by counsel at the hearing indicated that the matter of adjournment had been discussed by the parties prior to the hearing and that the Regional Director had denied the request for adjournment; that the Board's counsel had informed the respondent's counsel that the hearing could be concluded in 1 day, the respondent's counsel claiming a longer period would be required; the Board's counsel was willing to consent to the taking of depositions of the respondents' aforesaid two witnesses, which suggestion the respondents' counsel declined to accept. The application for adjournment was denied. Counsel for the Board then informed the respondents' counsel that if, at any time before the conclusion of the hearing, he wished to proceed in any way with his defense the Board's counsel would request that he be permitted to do so. This suggestion was not acceptable to respondents' counsel, who then stated, "If the request for a 3 weeks' adjournment is granted, counsel

¹ This organization has adopted no name and is designated by the members simply as the "company union."

for the respondents will prevail upon his clients to return within 2 weeks, and ask that the matter go down for the 20th of this month." The motion was denied. Counsel for the Board moved that the hearing proceed in the absence of counsel for the respondents. The motion was granted and counsel for the respondents withdrew from the hearing which was thereafter conducted in his absence. It is plain here that there could have been no emergency to justify the absence of the respondents' principal witnesses since both trips were admittedly arranged "a long time prior to December 1, 1937." Moreover, ample notice of the hearing was given to the respondents. In the absence of an adequate showing of substantial cause, private convenience must accommodate itself to public necessity. Accordingly, we find that the respondents' position in the matter is without merit and the rulings of the Trial Examiner in connection with the respondents' request for adjournment are hereby affirmed. During the course of the hearing the Trial Examiner made several rulings on other motions and on the admissibility of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 15, 1938, the Trial Examiner issued his Intermediate Report in which he found that the respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act, and recommended that the respondents cease and desist therefrom and take certain specified affirmative action. On February 24, 1938, the respondents filed exceptions to the Intermediate Report. The Board has reviewed these exceptions and finds them to be without merit.

By letters dated May 12 and 16, 1937, respectively, the respondents, through their counsel, requested oral argument before the Board on the understanding that they be afforded an opportunity to cross-examine the Board's witnesses and proceed with the trial, *de novo*. The Board denied the respondents' requests for oral argument on this basis.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS ²

Ronni Parfum, Inc., is engaged in the manufacture and sale of perfumes. Ey-Teb Sales Corp. is engaged in the manufacture and sale of eye preparations and kindred products. Both of said com-

² For the purposes of this proceeding the facts stated in this section were stipulated and agreed to by counsel for the respondents and counsel for the Board.

panies have their principal place of business in a single loft in the City and State of New York. The interests of both of the respondents shall be deemed the same.

The essential raw materials used in the manufacture of the aforesaid products are perfumes, dyes, chemicals, and containers, approximately 10 per cent of which are shipped to the respondents from points outside the State of New York. Approximately 50 per cent of the products manufactured by the respondents are shipped outside the State of New York.

II. THE ORGANIZATIONS INVOLVED

United Mine Workers of America, District No. 50, Chemical Division, successor to Chemical Workers Local Industrial Union No. 33, is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O. It admits to membership, among others, all production employees of the respondents, exclusive of supervisors, office workers, and shipping clerks.

The Company Union is an unaffiliated labor organization, admitting to membership all employees of the respondents.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Toward the end of June 1937, the Union distributed handbills to the respondents' employees at the close of the working day, inviting them to attend an organization meeting to be held on that evening. A large majority of the respondents' employees, including Anne G. Koppelman, Sylvia Silverman, Paula Zager, and Bertha Ball, attended this meeting and signed union membership cards. The Union granted them permission to establish a separate unit at the respondents' plant. For this purpose a collective bargaining committee, composed of Anne G. Koppelman as chairman, Bertha Ball as shop steward, and Adeline Scala, herein called the committee, was chosen from among the respondents' employees. In collaboration with officers of the Union, the committee drew up a proposed contract relative to wages, hours, and working conditions. On the following day the committee informed Unterman, vice president of Ronni, that it represented a majority of the respondents' employees, and presented the contract for his consideration. At this conference Unterman stated that he would have nothing to do with the C. I. O., and that he could not sign any contract without consulting his partner, Murray Morin, who was absent in Europe.

On July 2, 1937, Unterman called the committee aside during working hours and asked them to come to terms. He stated that he was

a poor man and unable to meet their demands. As a compromise he offered a raise of \$1 per week for all employees then receiving less than \$12 per week and an additional raise of \$1 when business improved. At his suggestion the proposal was immediately submitted to a vote among the Union's members. When the committee returned to Unterman's office to inform him that the vote had resulted in a rejection of his proposition, they were confronted by one Weiss, who was introduced as an attorney. Weiss attempted to persuade the committee to abandon their affiliation with the Union, stating that the C. I. O. was a "racket" and that the plant would be moved if the girls persisted in remaining C. I. O. members because "the bosses will never sign up." These statements were made in Unterman's presence and confirmed by him with such remarks as "I told you that before. I still mean it." and "If you girls still insist on that, you are all fired tonight, all who want to stay with C. I. O." The committee then returned to the factory and informed the other Union members of the respondents' refusal to negotiate the contract. Thereupon, said members sat at their tables and refused to work. Unterman or Weiss demanded that they work or go home. They chose to do the latter, and were paid up to 3 p. m., although the normal workday customarily ended at 5:30 p. m. On July 3, 1937, the following day, the plant was not opened. July 4 and 5, 1937, were holidays. From July 6 to July 13, several of the employees, including the committee members, were on strike and engaged in picketing the plant.

On July 13, 1937, Koppelman, the chairman of the committee, was called into the office of Murray Morin, who had then returned from Europe. Morin informed her that he would never sign up with the C. I. O., "even if he were on his death bed." Promising to give the girls a raise of \$2 per week, he praised Koppelman's intelligence and asked her to inform the other striking employees of his proposition and to influence them to return to work. This attempted settlement was unsuccessful. On the following day, Morin reiterated his promise of a raise, and in addition offered a 40-hour week during the summer months, seniority rights, and a contract with his employees embodying these terms. He further promised to pay them for a full week, without deduction for the portion of that week which had been spent in picketing, if they would return to work immediately. These terms were accepted by the strikers, who returned to work on July 14, 1937. Thereupon, Morin invited them all to lunch at his expense.

On the afternoon of the strikers' return to work, Morin called the employees together and stated that they could have a union of their own, elect their own officers, and hire a lawyer at his expense. A forelady then caused a paper to be circulated and signed by the

employees during working hours, stating, in substance, that they desired to have no further connection with the C. I. O.

On July 15, 1937, Morin returned to the plant from a consultation with representatives of the Board and announced, "I bought your lunch and don't you make a Patsy out of me. I went down to the Labor Board and showed them that paper that we don't want anything to do with the C. I. O., and don't you make a fool of me. I consented to the election." He then called Koppelman aside and told her that the Board had requested him to consent to an election among the employees and that he was not supposed to speak to the girls about it. He then asked her to remind the girls that if they voted for the C. I. O. they would go back on the picket line, because he would never sign up with them. He stated that even if the C. I. O. won the election, it merely meant that they were presenting a salesman to sell their goods to him, and he did not have to buy. Koppelman, however, advised the girls to vote for the C. I. O., whereupon Morin publicly repeated the statements which he had made to Koppelman alone. Prior to the election Dorothy Gampietro, a forelady in the respondents' plant, made a statement to the girls in the ladies' room to the effect that she had every girl marked down who she thought would vote for the C. I. O. and that she would report those who voted for the C. I. O. to Morin, and they would be fired.

Although, prior to the strike, Saturday was the customary pay day, the girls were paid on Friday, July 16, 1937, for a full week plus the \$2 raise which Morin had promised. Coincidentally, Morin chose this occasion to announce that he expected them to treat him as nicely as he was treating them.

On July 19, 1937, an election was held under the direction and supervision of the Board's Regional Director among the respondents' employees. The teller's report showed the following results:

Total Number Eligible to Vote.....	16
Total Number of Ballots Counted.....	14
Total Number of Votes in Favor of Local 33.....	5
Total Number of Votes Against Local 33.....	9
Total Number of Blank Votes.....	0
Total Number of Void Ballots.....	0
Total Number of Challenged Votes.....	2

We find that the respondents' acts of intimidation and persuasion in connection with this election preclude a finding that it truly reflects the desires of its participants. We further find that the respondents, by means of the threats, warnings, and undue persuasion above set forth, have interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed in Section 7 of the Act.

B. Interference with and domination of the formation of the company union

On July 20, 1937, Dorothy Gampietro, forelady, suggested that it was a propitious moment for the employees to form their own union. During the lunch hour a meeting was held at the plant. Gampietro was nominated and elected as chairman of the Ey-Teb group, and Estelle Kushner, a bottler in Ronni, was nominated by one Milton Salkin, shipping room foreman, and elected as chairman of the Ronni group. At this meeting no name was chosen for the organization and it was subsequently referred to by the employees simply as the Company Union. There were no provisions made for a constitution, bylaws, dues, or future meetings. No officers were chosen, other than the two chairmen. At the meeting, a proposed contract was drawn up, containing provisions for a 40-hour week, a \$2 raise (which was already in effect), and certain holidays off with pay. A clause concerning seniority rights was also recommended. It was suggested that the proposed contract be formally prepared by a lawyer who was to be selected at some future meeting. The matter of choosing a lawyer, however, was never put up to the members of the Company Union.

On or about August 9, 1937, a committee composed of Gampietro, Kushner, and one Adeline Scala, an Ey-Teb employee, sought Morin's advice on choosing a lawyer. Morin arranged an appointment for them with Abraham Hertz, the counsel engaged by the respondents in this proceeding. Hertz drew up a formal contract, embracing substantially the terms of the proposed contract which had been drafted at the first meeting of the Company Union, but omitting all mention of seniority rights. The committees did not offer to pay Hertz for his services because they "understood that Mr. Morin and Mr. Unterman would take care of that." Shortly thereafter, Gampietro circulated a "legal-looking paper" among the employees, which among other things stated the employees had elected, as their bargaining committee, Gampietro, Kushner, and Adeline Scala. Scala in fact had never been elected. She is the sister of Gampietro, and at the latter's suggestion it was privately agreed between Gampietro and Kushner to include her on the committee. Upon learning this, several employees objected. It was finally agreed that Scala would be allowed to remain on the committee, and that another member from Ronni should be elected. A meeting was immediately held for this purpose. One of the nominees at this election was Koppelman, who testified that Gampietro publicly advised her that "if I were wise I would stay out of all activity; that I was in enough hot water as it was." It is pertinent here to mention a similar remark which was made at the previous meeting, on which occasion Bertha Ball

attempted to make various suggestions and was instructed by Gampietro to "keep your mouth shut and stay out of this, because you have been in enough trouble. You have been on a committee (C. I. O.), and the bosses have enough against you."

On or about August 9, 1937, during working hours Gampietro read aloud to the girls a contract, presumably the one which had been drawn up by Lawyer Hertz, which, in substance, provided for a 40-hour week during summer months, a 42½-hour week during winter months, and a \$2 raise in weekly salaries. It also provided for the classification of the girls into groups. Under his classification no girl was to be laid off from any one group unless the entire group was laid off. Koppelman, Zager, Ball, and Silverman were included in one group with a new girl employed subsequent to the date of the strike. The contract was signed by all the employees except the four girls, who demurred on the ground that unless seniority rights were included, they would probably be discharged for their past C. I. O. activities.

There can be no doubt that the Company Union originated and functioned at the respondents' behest. After President Morin's announcement at the conclusion of the strike on July 14, 1937, to the effect that the girls could have a union of their own and seek the advice of a lawyer at his expense, Gampietro, the forelady, launched the organization at a propitious time a week later. The supervisory staff participated in the first meeting. Thereafter, the lawyer was furnished, as promised. The membership was obtained under the compulsion of the respondents' officials and supervisory employees. The organization remained amorphous, without name, constitution, or bylaws. Its sole purpose was to crush the outside union movement and deprive the employees of the free exercise of their right to self-organization. We find that the respondents have dominated and interfered with the formation and administration of the Company Union, and contributed financial and other support thereto, and have thereby interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. The discharges

On August 12, 1937, Morin entered the factory and announced that a majority of the employees had signed the contract, and that it would work to the disadvantage of the four girls if they persisted in refusing to sign. He accused these four girls of taking his money and voting against him at the election.

On August 13, 1937, the four girls signed the contract upon Kushner's promise to "take it up with the bosses" if they were fired un-

fairly. The Company Union has held no meetings and transacted no business since the signatures to the contract were successfully obtained.

By its terms the contract provided that during slack business periods the work would be divided equally among the employees. This provision was not followed by the respondents. On August 13, 1937, at the close of the working day, Gertrude Crystal, forelady, read aloud to the employees a list of the names of approximately 10 employees, including Koppelman, Zager, Ball and Silverman, who were to be laid off because "business was slow."

Anne G. Koppelman was discharged on August 13, 1937. Koppelman had been employed by the respondents for approximately 3 years, and during the last 2 years of her employment she had worked steadily, without lay-offs. Prior to her C. I. O. activities, as chairman of the committee at the respondents' plant, she had been considered an efficient and steady worker, and on one occasion Unterman informed her that her job with Ronni was a steady one. Only two employees in the respondents' plant have greater seniority.

At the time of her discharge she was earning \$14 per week, and she has been unable to secure employment elsewhere since August 13, 1937.

Paula Zager was discharged on August 13, 1937. Zager has been employed by Ronni for approximately 2 years. She is one of the group of four girls whose ardent and positive sentiments for an outside union were well-known to the respondents. Forelady Kushner testified that prior to her C. I. O. activities she was considered a steady and efficient worker by the respondents. At the time of her discharge the respondents retained several employees who had less seniority.

Zager was earning \$12 per week at the time of her discharge on August 13, 1937. Since then she has had only 3 days of temporary work for which she was paid a total of approximately \$6.

Bertha Ball was discharged on August 13, 1937. Ball was first employed by Ronni in July 1935, and has worked steadily, without lay-offs, during the year and a half immediately preceding her discharge. Her work for the respondents had always been considered satisfactory prior to her activities as shop steward and member of the C. I. O. On one occasion Morin stated that she was working steadily because she was one of his best workers. Several of the girls retained by the respondents at the time of her discharge had less seniority.

At the time of her discharge she was earning \$12 per week, and during the time she has been laid off she has worked only 10 days at \$6 per week.

Sylvia Silverman was discharged on August 13, 1937. Silverman was first employed by the respondents in July 1935. She had worked

steadily during the year and a half immediately preceding her discharge, and was considered by the respondents to be a steady and efficient workman prior to her conspicuous activities in the C. I. O. Her seniority was greater than several of the employees retained by the respondents. She has worked only 2 days since her discharge, receiving \$2.80 per day.

There is nothing in the record to raise a doubt as to the authenticity of the reason given by the respondents for the reduction in force. However, among the 10 girls who were retained, several had less seniority than the four girls, and at least two had been hired subsequent to July 2, 1937, the date of the strike. The respondents' busy season is the period from September through December. Subsequent to August 13, 1937, Morin informed the committee of the Company Union that business was improving and suggested rehiring Koppleman, Ball, Zager, and Silverman. The committee advised him against it because they had "caused so much trouble before," and the respondents therefore refused to reemploy the four girls, although they have recalled several other girls, junior in service with the respondents, who were laid off at the same time and in addition have hired several new girls. We find that the respondents discharged Anne G. Koppelman, Paula Zager, Bertha Ball, and Sylvia Silverman because they joined and assisted the Union and thereby interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents 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 tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

The respondents fostered the organization of the Company Union and encouraged its employees to become members of it in an attempt to circumvent the duties imposed upon them by the Act and to deny them their rights as guaranteed by Section 7 of the Act. We shall therefore order the respondents to withdraw all recognition from the Company Union as an organization representing its employees for the purpose of dealing with the respondents, and to give no effect to the agreement negotiated with the Company Union as bargaining agent of its employees.

We have found that the respondents discharged Anne G. Koppelman, Paula Zager, Bertha Ball, and Sylvia Silverman, for the reason that they had joined and assisted the Union and had otherwise exercised the rights guaranteed to them by Section 7 of the Act. We shall therefore order the respondents to offer to reinstate them to their former positions and to pay to each of them a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less the amount, if any, which she has earned during said period.

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. United Mine Workers of America, District No. 50, Chemical Division, successor to Chemical Workers Local Industrial Union No. 33, affiliated with C. I. O., and the Company Union are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Anne G. Koppelman, Paula Zager, Bertha Ball, and Sylvia Silverman and thereby discouraging membership in Chemical Workers Local Industrial Union No. 33, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By dominating and interfering with the formation and administration of the Company Union and by contributing support to said organization, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

4. By interfering with, restraining, and coercing their employees in the exercise of their rights guaranteed by Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The contract negotiated by the employees and the Company Union is invalid and of no effect.

6. The aforesaid 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 foregoing 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 respondents, Ronni Parfum, Inc., and Ey-Teb Sales Corp., New York City, and their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Mine Workers of America, District No. 50, Chemical Division, successor to Chemical Workers Local Industrial Union No. 33, affiliated with C. I. O., or any other labor organization of its employees at their plant in New York City, by discrimination in regard to hire or tenure of employment or any terms or conditions of employment;

(b) Dominating or interfering with the administration of the Company Union or with the formation or administration of any other labor organization of their employees and from contributing financial or other support to the Company Union or any other labor organization of their employees;

(c) Recognizing the Company Union as a representative of any of their employees for the purpose of collective bargaining concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work;

(d) Giving effect to their agreement negotiated with the Company Union;

(e) In any other manner interfering with, restraining, or coercing their 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 to Anne G. Koppelman, Paula Zager, Bertha Ball, and Sylvia Silverman immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole Anne G. Koppelman, Paula Zager, Bertha Ball, and Sylvia Silverman for any loss of pay they have suffered by reason of their discharge, by paying to each of them a sum of money equal to that which she would normally have earned from August 13, 1937, the date of her discharge, to the date of such offer of reinstatement, less the amount, if any, which she has earned during said period;

(c) Withdraw all recognition from the Company Union as a representative of its employees for the purpose of dealing with the

respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work, and completely disestablish the Company Union as such representative;

(d) Immediately post notices in conspicuous places throughout their plant and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating (1) that the respondents will cease and desist as aforesaid; (2) that the respondents withdraw all recognition of the Company Union as a representative of their employees and completely disestablish it as such representative;

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this order what steps the respondents have taken to comply therewith.