

In the Matter of RABHOR COMPANY, INC., A CORPORATION and INTERNATIONAL LADIES' GARMENT WORKERS UNION

Case No. C-29.—Decided April 7, 1936

Bathrobe Industry—Interference Restraint or Coercion: surveillance of union meetings and activities; denial of right of employees to be represented by non-employees—*Strike—Unit Appropriate for Collective Bargaining:* community of interest; eligibility for membership in only organization making bona fide effort at collective bargaining; production employees—*Representatives:* proof of choice: participation in strike called by union; strike benefit payroll; statement designating—*Collective bargaining* employer's duty as affected by strike; refusal to meet with representatives—*Remstatement Ordered, Strikers:* displacement of employees hired during strike.

Mr. Laurence A. Knapp for the Board.

Mr. Erwin Feldman, of New York City, for respondent. *Keogh & Gandee*, of South Norwalk, Conn., of counsel.

Mr. Elias Lieberman, of New York City, for the Union.

Mr. Louis L. Jaffe, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 12, 1935, the International Ladies' Garment Workers Union, hereinafter called the Union, filed with the Regional Director for the Second Region, a charge that the Rabhor Company, Incorporated, Norwalk, Connecticut, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935. On December 11, 1935 the Board issued a complaint against the Rabhor Company, Incorporated, hereinafter called the respondent, said complaint being signed by the Regional Director for the Second Region, and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the Act.

In respect to the unfair labor practices, the complaint (as amended at the hearing)¹ alleged that the employees of the re-

¹In the original complaint, it was stated that the employees on September 25th designated the Union as their representative by accepting membership in the Union. By amendment the date was changed to September 27th and the reference to accepting membership in the Union was omitted.

spondent engaged in its Norwalk Plant in shop work, exclusive of supervisory workers, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act; that on or before September 27, 1935, a majority of these employees designated the Union as their representative for purposes of collective bargaining; that on September 27, September 30, and October 25, 1935, the Union requested the respondent to enter into negotiations with it in respect to wages and conditions of employment and that the respondent at all these times and at all times since has refused to bargain with the Union on behalf of its employees; and that such refusal constitutes a violation of Section 8, subdivisions (1) and (5) of the Act.

The complaint and accompanying notice of hearing were served on the parties in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. On January 9, 1936, the Board, pursuant to Section 35, Article II of said Rules and Regulations, directed that the proceeding be transferred to and continued before it. Commencing on January 10, 1936, and concluding on January 15, 1936, a hearing was held at Norwalk, Connecticut, by Robert M. Gates, the Trial Examiner designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was offered to all parties.² The respondent appeared specially to move that the complaint be dismissed on the grounds that the Act is unconstitutional because the subject matter with which it deals is not commerce within the meaning of Article I, Section 8, Clause 3 of the Constitution of the United States, and because it violates the Fifth Amendment to the Constitution; on the further ground that, not being engaged in commerce, the Act is not applicable to it; and, finally, on the ground that the Union is a "non-resident union", that its purpose is to compel the respondent to move its plant from Norwalk, Connecticut, to New York City, and that the Union is under investigation in New York. The Trial Examiner denied the motion to dismiss. Respondent then participated in the hearing until it withdrew on January 15th, the last day thereof. On February 11, 1936, counsel for respondent, pursuant to his request, orally argued the case and made certain statements for the record before the Board at Washington.

Upon the entire record in the case, including the stenographic transcript of the hearing, the documentary and other evidence received at the hearing, the briefs submitted, and the oral argument, the Board makes the following:

² Respondent complains of the refusal of the Board to issue certain subpoenas. This is considered below.

FINDINGS OF FACT

1. *The Rabhor Company, Incorporated.* The respondent is a New York corporation engaged in the manufacture and distribution of bathrobes, beach robes and jackets for men and women. It has its factory in Norwalk, Connecticut. It is the largest unit in the industry. It does an annual business of about \$2,000,000. (B-19.) The respondent secures 75% or more of its raw materials—terry cloth, flannel, cotton piece goods, silks, beacon cloth, braid, thread, binding, cotton fibre hats—from out of the State of Connecticut. The respondent ships 75% or more of its finished product out of Connecticut.

We find that the operations of the respondent constitute a continuous flow of trade, traffic and commerce among the several States.

2. *Strike of respondent's employees.* In the early part of 1935, the Union, which is a labor organization, attempted to organize the bathrobe workers in and about New York City. It communicated with all bathrobe manufacturers, including the respondent, advising them that the workers wished to enter into collective bargaining. Some employers responded to this communication; the respondent, and some others, did not. On August 26, 1935, the Union called a strike of all bathrobe workers in New York City and succeeded, within a period of five days, in negotiating contracts with most of the manufacturers. There was no strike, however, in the respondent's plant—none of its employees were Union members—nor in the Royal Robe Company, the two largest operators in Norwalk, Connecticut. The Union did not succeed in negotiating contracts with either.

Charles Schwartz, a Union organizer, while in Norwalk in the summer of 1935 to organize a belt shop, was approached by some of respondent's employees relative to organization by the Union of respondent's plant. Certain employees approached the New York headquarters of the Union for the same purpose. As a result of these requests the Union sent Miss May Gippa to Norwalk to attempt to organize respondent's plant, and rented offices there. She came to Norwalk on Monday, September 16th. She and Charles Schwartz spread Union leaflets calling for a meeting on the night of September 17th to be held under the auspices of the Union. Only about 10 persons appeared at the meeting. During the rest of the week she visited the homes of 25 or more employees and talked to them of their working conditions. She found most of these people sympathetic with the announced Union objectives. She found difficulty, however, in arranging meetings, because, as she was told, many feared that the respondent would station spies near the meeting hall and observe those who entered. In fact, officers of the respondent were seen near the meeting hall on the occasion of various Union

meetings. Certain of the workers asked that an accredited officer of the Union appear in Norwalk, so that they might be assured of the bona fides of the Union, of its objectives, and of its organizers. During the previous year, they had been misled, as they believed, by another union. Harry Greenberg, a vice-president of the Union, in charge of the organization of bathrobe workers, came to Norwalk. He talked with interested workers and told them of the Union's objectives and achievements.

On September 24, 1935, the pressers, having for some time discussed their grievances among themselves, decided that they would walk out in the afternoon. During the period when the National Industrial Recovery Act was in effect, the plant had operated under a code limiting the normal working week to five days from 8 to 5 o'clock. Work on Saturdays and time after 5 o'clock was overtime and paid time and a half. Since the collapse of the code, overtime, which at certain seasons of the year was considerable, was paid for at only the regular wage. The men complained of the amount of overtime and of the wages, both generally and as related to overtime. On the afternoon of September 24th at 3 o'clock, the pressers laid down their work and got their coats. Officers of the respondent came upon the scene and threatened the men with permanent discharge if they left. The men stated their grievances. George Safir, the general manager, induced them to return to their work. He then approached certain of the pressers individually and promised them raises of \$1 per week. The pressers were not satisfied. They resolved to go to the Union organizers and consult them. The Union organizers told them to come to a meeting which had been previously scheduled for organizational purposes, that evening in Moose Hall.

The pressers and the Union organizers fearing espionage, met instead at Union headquarters. The pressers said that they intended to strike. The organizers doubted that enough of the employees were ready. The pressers and four or five girls present assured them that a majority were ready. Miss Gippa telephoned Greenberg in New York City. He said that if the workers insisted on striking to let them go ahead and the Union would help them. Miss Gippa then assisted them in the preparation of a leaflet. The leaflet announced that Rabhor Workers had voted to strike for (1) a union shop; (2) 37½ hour week; (3) time and a half for overtime; (4) a decent living wage; (5) security of the job; (6) equal division of work. The leaflet announced a meeting of "Rabhor strikers" at 10 A. M. the following morning (September 25th) in Moose Hall (B-16).

On the morning of September 25th, 147 people were out on strike. Mr. Greenberg in New York was informed by telephone of the fact. He telephoned to Leo Safir, president of respondent. He had asked

the New York telephone operator to leave the switch to Norwalk open and he heard the operator in Norwalk tell the New York operator that Mr. Safir did not wish to talk to Mr. Greenberg. Mr. Greenberg came to Norwalk and at one o'clock addressed the strikers' meeting in Moose Hall. He told them that the Union had attempted to reach the respondent to enter into collective bargaining; that the Union would try again; that if Safir's continued refusal to meet should necessitate a prolonged strike, in the name of the "International", (the Union) he, Greenberg, pledged them strike benefits for the duration of the strike. He advised them to picket peacefully. On September 27th the plant including the shipping room closed down and operations ceased. The plant was reopened on October 4th (B-19).

3. *The Union as representative of the employees.* The complaint alleges that the employees of the respondent engaged in shop work and not engaged in a supervisory capacity constitute a unit appropriate for purposes of collective bargaining. All such persons are eligible to membership in the Union; all have a community of interest. We find that such employees constitute an appropriate unit for purposes of collective bargaining. At the time of the strike there were 350 such employees. This figure is derived from two sources: first, the testimony of workers in the various departments as to the numbers of their co-workers; second, an allegation by respondent in a petition filed in a State court for an injunction against the picketing of its plant (B-19).

On Wednesday, September 25th, 147 employees answered the strike call and signed their names to a roll at the strikers' meeting in Moose Hall. Each day new strikers added their names. Each received a strike card with the date stamped on it. These cards were issued to enable the Union to determine to whom and in what amounts strike benefits were payable. The benefit was \$1 per day, exclusive of Saturdays and Sundays. To be entitled to payment for any day, a striker had to have his card stamped on that day. At the end of the first week, October 2nd, a payroll was made up from the roll of strikers. Upon this payroll was entered the name of the striker, the amount owing to each for the week, and, upon receipt of the strike benefit, his signature. This procedure was followed thereafter and was still being practiced at the time of the hearing. A photostatic copy of the strike benefit payroll as of October 2nd was put in evidence. There were 219 signatures upon it and May Gippa, who prepared the roll and witnessed the signatures, testified as to their genuineness.

On Thursday, September 26th, 184 persons were on strike, on Friday, 210, on the following Monday, September 30th, 219, on

Tuesday, 221, on Wednesday, 221. At no time since has the Union paid strike benefits to fewer than 182.

On Saturday, September 28th, at the Union meeting in Moose Hall, it was resolved unanimously (the resolution was oral) that the strikers would not confer with the respondent unless a representative of the Union were present. This resolution seems to have been taken because of an incident which happened the day before. The Chief of Police had asked a committee of 5 strikers to meet together, at the City Hall, with a committee of 5 non-striking employees relative to the policing of the plant during the strike. Greenberg authorized the sending of a committee, which was chosen by the strikers. At the Council Chambers in the City Hall, the committee found not only the Chief of Police and the non-strikers committee, but Leo and George Safir, the president and general manager, respectively, of the respondent, their attorneys, and certain detectives. The employees who had remained in the plant were asked to give their opinion of conditions in the plant and after that Leo Safir argued with the strikers as to their demands and grievances. The strikers felt that they should not enter into such discussions without their Union representatives. They summoned Mr. Greenberg to the meeting. When he came into the hall, Leo Safir turned to his group and said, "Come on. I won't be in the same room with Mr. Greenberg, representative of the Union," and walked out.

In the middle of October 189 strikers signed a paper stating that "we have chosen and hereby designate" the Union as our "exclusive representative." The respondent had at this time brought suit against the Union to enjoin it and the strikers from picketing. This paper was prepared for possible assistance in that suit. Of the 189 signatories, 182 were persons who had received and signed for the first weekly strike benefit payment.

We find below that there were on Monday, September 30 and on October 25th, refusals by the respondent to bargain. Our question, therefore, is whether on those dates the Union represented a majority of the employees. There had not been on September 30th a formal designation such as was made two weeks later. But on the previous Friday 210 persons and on Monday 219 persons were not only out on strike, but they had personally signed a strikers roll at Union headquarters and were receiving strike benefits from the union. This was more than half of the 350 workers in the plant. These figures are based on the number receiving strike benefits and as such, are well authenticated and exactly determined. We have in the record the strike benefit payroll for the week ending October 2, contemporaneously compiled, showing the name of each person and, opposite his name, the signature of the person. By accepting and sign-

ing for a strike benefit, the signer asserted his position as a striker making common cause with other strikers.

The strikers were acting under the auspices and leadership of the Union. This is not less true, because the initial impulse actually to strike came from certain of the workers. Those same workers had asked the Union to send organizers to Norwalk and one week before the strike this was done. A number of workers had asked that an important Union official come to Norwalk so that they might be assured of the competence and integrity of the organization, which they were to choose to lead them. The first call to meeting 8 days before the strike was signed by the Union; the leaflet stated, "The organization campaign is under the personal supervision of Mr. H. Greenberg, Vice-president of the International Ladies' Garment Workers' Union." The strike call, itself, was signed by the Union. The leaflet stated, "8000 Bathrobe Workers have already learned that in a Union there is strength. * * * Stick together and you will win." The Union had formulated the demands. On the day of the strike Greenberg addressing a meeting of the strikers told them that he was attempting to negotiate with the respondent. Every day thereafter meetings of the strikers were held under Union auspices. The strikers' committee which went to the City Hall on Friday took instructions from the Union. On Saturday, the strikers meeting resolved that no conferences with the respondent should be held without the presence of a Union official. Finally, the financial support of the strike came entirely from the Union.

A majority of the workers have adhered constantly and consistently to the Union leadership. Of the 189 persons signing the formal designation in the middle of October, 182—a majority—received strike benefits in the first week of the strike, and even up to the time of the hearing, January 10, 1936, there had never been fewer than 182 receiving strike benefits.

The leadership of a strike is necessarily entrusted with the function of collective bargaining during the strike. It has formulated the demands and called the strike to win them. It has constantly before it the problem of finding ways and means to achieve the objectives, and among the means, one of the most important and most usual is collective bargaining. We find, therefore, that a majority of the shop employees of the respondent had on Thursday September 26th and at all times thereafter designated the Union as their representative for collective bargaining.

4. *The unfair labor practices.* As found above, on Wednesday, the day of the strike, Greenberg had attempted by telephone to speak to Leo Safir and had heard the Norwalk operator say that Safir did not wish to speak to him. And on Friday, George and Leo

Safir said in Greenberg's presence that they would not stay in the same room with him.

Late Friday afternoon, September 27th, Greenberg told Charles Schwartz, Mayor of Norwalk, of the incident that had occurred shortly before in the Council Chamber and intimated that he would like the Mayor to arrange a meeting between the respondent and the Union. The Mayor telephoned respondent. He spoke with one whom he believed to be George Safir. He asked whether a meeting might be arranged. He was told that Leo Safir, the president, was out of town, but that, in any case, it was doubtful that a meeting could be arranged. On Monday morning, the Mayor telephoned again. He spoke with George Safir. George Safir told him that "he would prefer to close the plant entirely rather than meet with the officials of the Union."

The Union then requested the Connecticut Board of Mediation to call a conference of the respondent and the strikers in order to bring about a settlement under its auspices. This conference was held on October 25th. The respondent at this conference stated that it would refuse to give any information in the presence of the strike committee; that the information was confidential. The Union representatives withdrew. Each side presented its material without the presence of the other. Leo Safir told the Mediation Board that he would not meet with the Union. The Board then issued a statement that "at the present time the emotional situation is such as to preclude the possibility of successful mediation."

As we understand it, the respondent does not deny that it has refused and would refuse to meet with the Union. Counsel for respondent, in argument, said that an employer was under no duty to meet with a union, such as it conceived the International to be. It charges the Union with having brought the workers out on strike by false statements and promises, and with having induced strikers to engage in acts of violence. The respondent maintains that the Union told the workers that wages were lower in its plant than in "union shops" and that it would secure certain union scale wages for them. The respondent offered to prove³ that wages paid by it were as good as or even better than wages in union shops and that the Union in these shops had accepted less than the avowed minimums. There is some evidence that the organizers stated to some workers that the Union insisted on certain minimum wages. In the strike call, which definitely stated the objectives, the demand was simply for "a decent living wage." In any case, the argument is not relevant. Where groups are to be organized and moved into action it is not unusual

³ Respondent's demand for subpoenas in order to make the offered proof will be discussed below.

for the leaders to promise more than can be secured or to indulge in some exaggeration. Indeed, it is one of the functions of collective bargaining to eliminate the misunderstandings that are bound to arise in these struggles and to resolve demands into what can be achieved. The Act does not give to us the mandate to examine the speeches and the conduct of those whom the employees choose to follow, and to determine whether, in our opinion, they are worthy to lead. That is for the workers alone to decide.

The respondent makes a similar point with respect to the alleged Union encouragement of violence upon the part of pickets and strikers. It appears that some of them were found guilty of assault upon workers in the plant; that about a month after the strike was called the respondent petitioned a State court for an injunction against picketing by the Union and the strikers upon the ground of violence; and that the injunction was granted. We do not know when these assaults took place. There is nothing in the record to show that the Union was responsible for them. Furthermore, we doubt that this phase of the strike accounts for the respondent's refusal to bargain. Leo Safir refused to talk with Greenberg at 9:00 o'clock A. M. on the first day of the strike. In any case the fact that during a strike, necessarily a time of heated emotions, the bounds of permissible conduct may have been overstepped by men or leaders cannot be used to deny to employees their full right of representation.

We conclude that the respondent on September 30 and October 25, 1935, refused to bargain collectively with the Union as the representative of its employees, and by such acts has interfered with and restrained 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 purpose of collective bargaining or other mutual aid or protection. We conclude further that such acts have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

OBJECTIONS TO THE REFUSAL TO ISSUE SUBPOENAS

The respondent challenges the fairness of the hearing because of the refusal to issue on its behalf certain subpoenas. Section 11, subsection (1) of the Act gives to any member of the Board the power to issue subpoenas. Article II, Section 19 of National Labor Relations Board Rules and Regulations, Series 1, provides that "applications for the issuance of . . . subpoenas may be filed with the Regional Director by any party to the proceedings. Such applications shall be timely and shall specify the name of the witness and the nature of the

facts to be proved by him, and must specify the documents, the production of which is desired, with such particularity as will enable them to be identified for purposes of production."

The respondent asked for subpoenas on the Reverend James Zeigler, and on Bessie and Samuel Jobrock, doing business as J. & W. Bathrobe Company, a competitor; also for a subpoena *duces tecum* on J. & W. Bathrobe Company to bring in all time records, payroll records and books, showing hours of work and weekly wages. The Board refused to issue the subpoena *duces tecum* but did authorize the issuance of the other two subpoenas. Though the requests for subpoenas had been signed by the respondent only after the hearing had been in progress some days, the Board did not consider the authorizations in respect to the Reverend Zeigler and the Jobrocks untimely because those persons were residents of Norwalk and would be quickly available.

Not being allowed a subpoena *duces tecum* for the "J. & W." records, respondent demanded a subpoena on S. L. Hoffman, New York City, and a subpoena *duces tecum* on the Union requiring it to produce all contracts made by its Local 91—composed of robe workers—during 1935 with plants located outside of New York City. Both subpoenas were refused. Thereupon, the respondent withdrew from the hearing.

The respondent claims, apparently, that the refusal to issue subpoenas was arbitrary. The respondent's requests for subpoenas did not state "the nature of the facts to be proved" as required by the rules. The respondent has not excused this omission. The reasonableness of the requirement seems to be beyond question. The Board can not be required to exercise the process of bringing witnesses to a hearing where either the relevancy of the evidence offered does not appear or it appears affirmatively that the offer will not be relevant. The Board was willing to issue subpoenas for the Reverend Zeigler and the Jobrocks, without a statement of what they would prove, because they were in the vicinity and the inconveniences to them would be trifling. But S. L. Hoffman was in New York City. The Board was unable to see what could be the relevancy of the employment records of one of the respondent's competitors or of the Union's agreements with competitors, and the respondent did not, as required by the rules, make it clear.

In any case, the respondent can show no damage by reason of the refusal. Counsel for respondent advised the Board, on the argument before it, that he desired to prove by S. L. Hoffman and by the records of "J. & W." and the Union that conditions in the respondent's shop were as good as or better than conditions in "union shops;" that the statements of the Union to the contrary were slanderous and

were misleading to the respondent's employees; and that because of them the respondent was under no duty to bargain with the Union. We have already disposed of this argument on the assumption that the respondent could have made good on the offer of proof, and stated our opinion that the entire line of proof and the argument have no bearing on the issues. The respondent claims further that it withdrew from the hearing because it became aware that the Board would issue no subpoenas whatever on its behalf and counsel has told us about all the subpoenas which he would have asked for but never did. This claim is directly and positively refuted by the record. The Board did in fact authorize the issuance of two subpoenas at the respondent's request.

THE REMEDY

We said in the *Matter of Columbian Enameling & Stamping Company*: "It would be futile simply to order the respondent to bargain with the union since the plant now has its full quota of men and the process of collective bargaining could yield little comfort to those who are not employed . . . Under these circumstances we must restore, as far as possible, the situation existing prior to the violation of the Act, in order that the process of collective bargaining, which was interrupted, may be continued."

If the respondent had met the representatives of its employees, an agreement might have been reached; the employees might have returned to work. Again quoting from the *Columbian* case: "It does not lie in the mouth of the respondent to say that this result would not necessarily have followed. The law imposed a duty to bargain under these circumstances because that result might have followed. It is respondent's conduct which has precluded that possibility." Therefore, we shall order the respondent to offer employment to its striking employees insofar as their positions are now filled by persons who were not working for the respondent on September 24, 1935.

CONCLUSIONS OF LAW

Upon the foregoing findings of fact, the following conclusions of law are made.

1. The employees of respondent engaged in shop work and not engaged in a supervisory capacity at its Norwalk Plant constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

2. The International Ladies' Garment Workers Union (the Union) is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. By virtue of Section 9 (a) of the Act, the Union, having been designated as their representative by a majority of the employees in an appropriate unit, was, on September 26, 1935, and at all times thereafter, the exclusive representative of the employees in such unit for the purposes of collective bargaining.

4. By its refusal to bargain collectively with the Union, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

5. By its refusal to bargain collectively with the Union, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

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 Rabhor Company, Incorporated, shall take the following action, which the Board finds will effectuate the policies of the Act:

1. Offer employment to employees who were employed by the respondent on September 24, 1935, and have not since received substantially equivalent employment elsewhere, where the positions held by such employees on September 24, 1935, are now filled by persons who were not working for the respondent on September 24, 1935, and place all other employees who were employed by the respondent on September 24, 1935, and have not since received substantially equivalent employment elsewhere on a list to be offered employment as and when their labor is needed.

2. Cease and desist from refusing to bargain collectively with International Ladies' Garment Workers Union as the exclusive representative of the shop employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.