

IN THE MATTER OF CANVAS GLOVE MANUFACTURING WORKS, INC. and
INTERNATIONAL GLOVE MAKERS UNION, LOCAL NO. 88

Case No. C-24.—Decided April 10, 1936

Glove Industry—Strike—Interference, Restraint or Coercion: persuasion of employees to resign from union—*Company-Dominated Union:* abortive attempt to form as violation of Section 8 (2); domination and interference with formation—*Discrimination:* demotion, transfer, wage reduction; discharge; non-reinstatement following strike; lockout—*Reinstatement Ordered, Non-Strikers—Back Pay:* awarded—*Reinstatement Ordered, Strikers:* strike provoked by employer's law violation; discrimination in reinstatement; displacement of employees hired during strike.

Mr. David Moscovitz for the Board.

Mr. Milton M. Eisenberg, of Brooklyn, N. Y., for respondent. *Mr. Davis Kashman*, of counsel.

Mr. Samuel G. Zack, of counsel to the Board.

DECISION

STATEMENT OF CASE

A charge having duly been filed with the Regional Director for the Second Region by the International Glove Makers Union, Local No. 86, hereinafter referred to as the Union, the National Labor Relations Board, by the said Regional Director, issued and duly served its complaint with accompanying notice of hearing on December 10, 1935, charging the Canvas Glove Manufacturing Works, Inc., Brooklyn, New York, hereinafter referred to as the respondent, with having engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subsections (1), (2), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act.

The complaint alleged that the respondent, by its officers and agents: (1) following a strike on October 10, 1935, refused to reinstate Louise Villanova, Lena Stallone, Antoinette Verruzzia, Millie Cafora and Lucille Seligson and did discharge Olympia DeBirse, Sylvia Beres, Grace Laeta, Anna Ceponis, Margaret Catapona, Margie Andruzzi, Ray Bernstein and Jennie Pasqua for the reason that they joined and assisted a labor organization known as International Glove Makers Union, Local No. 86, and engaged in concerted activities for the purpose of collective bargaining and other

mutual aid and protection; (2) on or about October 18, 1935, did institute and form a labor organization or plan for the purpose of interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; and (3) refused to bargain collectively with the representatives of its employees.

In its answer, the respondent denies that it is engaged in interstate commerce as defined in the Act, or that it has engaged in unfair labor practices, and alleges that the Union violated the terms of an agreement signed on October 9, 1935, in that it called a strike without having first offered to arbitrate the alleged dispute.

Pursuant to the notice, a hearing was held in New York, New York on December 27, 30 and 31, 1935, before William R. Walsh, Trial Examiner duly designated by the Board. The respondent appeared, and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and produce evidence bearing upon the issues was afforded to all parties. The respondent moved to dismiss the complaint on constitutional grounds. The Trial Examiner reserved ruling on the motion. The motion to dismiss is hereby denied. On motion of counsel for the respondent, the complaint was amended by the Trial Examiner to correct the respondent's name to read "Canvas Glove Manufacturing Works, Inc.", and on motion of counsel for the Board, to correct the name of the Union from "Local 86" to "Local 88". Counsel for the Board also moved that the allegations in the complaint, insofar as they allege violations of Section 8, subdivision (5) of the Act, be dismissed. The motion was allowed by the Trial Examiner. At the end of the hearing, counsel for the Board moved that the pleadings be amended to conform to the proof. There was no objection, and the Trial Examiner granted the motion. The parties were afforded reasonable time for oral argument, and no briefs were filed.

On January 9, 1936, the Board, acting pursuant to Section 35, Article II of National Labor Relations Board Rules and Regulations—Series 1, directed that the proceeding be transferred to and continued before it.

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

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

1. The Canvas Glove Manufacturing Works, Inc. is a corporation created and existing under the laws of the State of New York and has its principal office and place of business in the Borough

of Brooklyn, City of New York, County of Kings, State of New York. The respondent is engaged in the manufacture, sale and distribution of canvas and leather work gloves. It normally employs 125 people, although the number varies with the season. The respondent is one of the two canvas glove manufacturers located within a hundred mile radius of New York City; most of the glove manufacturers are situated in the western part of the United States. The value of the respondent's yearly output amounts to approximately one-half of one per cent of the output of the entire industry.

2. Canton flannel, leather and cotton tubing are the principal raw materials used by the respondent in the manufacture of its product. The greater proportion of these materials are purchased through commission houses in New York, which in turn obtain the materials from their principals; whether or not the mills of the principals are located in the State of New York or elsewhere is not shown by the record. The respondent often makes contracts with commission houses under which, over considerable periods of time, the latter have materials shipped to the respondent as required.

Between 5 and 10 per cent by value of its principal raw materials are obtained by the respondent directly from the State of Tennessee. In addition, other minor items, not specified in the evidence, are obtained outside the State of New York.

During the period from June 1, 1935 to December 1, 1935, the value of goods purchased by the respondent amounted to \$77,140.83.

3. About 35 per cent of the respondent's finished product is normally shipped outside of the State of New York to destinations in all of the states of the United States. Sales for the period from June 1, 1935 to December 1, 1935 amounted to \$126,074.05. Most of the sales are made to jobbers. The finished product is shipped out of the plant by various trucking firms, among them the Railway Express Agency. Shipments out of the state are made by the Pennsylvania, New York Central, Erie and Delaware, Lackawanna & Western Railroads, as well as by trucking firms.

4. The respondent has one salesman who covers the New England states and the territory as far south as Washington, D. C. In those states not covered by the salesman, the respondent solicits business by means of advertisements placed in various periodicals with a nation-wide distribution.

5. All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the States.

II. THE RESPONDENT AND THE UNION

6. On September 23, 1935, 61 employees of the respondent, who were then unorganized, went on strike in protest against a reduction in wages. On October 3, a charter was granted to the strikers by

the International Glove Makers Union, and Local No. 88, a labor organization, was formed. Officers and a shop committee consisting of Marie Jordan, chairlady, Minnie Torre and Lucille Seligson, were elected.

7. On October 9, 1935, the strike was settled by an agreement between the Union and the respondent, and the strikers returned to work on October 10. The agreement contained the following relevant clauses:

"There shall be a Committee in the shop selected or designated by the workers, members in good standing of said ORGANIZATION. All matters in this agreement affecting the conditions of employment of all present and future members of said ORGANIZATION shall be taken up for adjustment, in the first instance, between the EMPLOYER and a Committee, chosen or designated by the members in good standing of said ORGANIZATION. The EMPLOYER hereby acknowledges that the said Committee, or its successors, shall have the right to represent any other workers in the shop who desire to be represented by them.

"There shall be no discrimination against any worker who at present is, or hereafter may become, a member of the said ORGANIZATION. No worker, a present member or who hereafter may become a member of the said ORGANIZATION, shall be discharged without good cause.

"Any and all disputes that may arise under this agreement in the shop between members of the ORGANIZATION and the EMPLOYER, or any other dispute which may directly or indirectly affect the interests of the workers, or their relationship as EMPLOYER or employee shall be taken up for adjustment, in the first instance, between the EMPLOYER and the Committee of the ORGANIZATION above referred to. Should they be unable to adjust the matter satisfactorily, then the matter shall be referred to an Impartial Chairman or Arbitrator, and his decision shall be final and binding upon the parties.

"The parties further agree that any and all workers who went out on strike shall be reemployed upon the signing of this agreement without any discrimination, and that the EMPLOYER shall not be entitled to retain any new workers engaged subsequent to the strike, before all of the said strikers are fully reemployed."

8. On Tuesday, October 15, the shop committee attempted to discuss with Isadore Gerber, president of the respondent, the respondent's refusal to reemploy four girls who had gone out on strike. Mr. Gerber refused to discuss the matter, and dismissed the members of the shop committee by telling them: "Go upstairs and mind your own business."

From time to time after the other strikers returned to work, several of them protested to Marie Jordan that they had been shifted to tasks with which they were not familiar and to operations that called for lower rates of pay than they had received prior to the strike. On October 17, Miss Jordan sought to discuss these alleged acts of discrimination with Isadore Gerber, but again she was met with the curt reply to "mind your own business, it's not your affair."

9. On about October 17 or 18, the shop committee was called to the office, and there met Mr. Largay, a representative of Elmer F. Andrews, Industrial Commissioner of the State of New York, the arbitrator named in the agreement of October 9. Apparently, Mr. Largay had come to the plant at the request of the respondent. What took place at the conference is not clear in the evidence, but it appears that the complaints of discrimination were discussed. After the conference, Mr. Largay addressed the assembled workers and suggested that they remain at their work until such time as the situation would clear itself. The significant feature of Mr. Largay's visit is not that it involved an attempt at arbitration, but that it is a confirmation of the contention made by the Union, and denied by the respondent, that there were numerous complaints of discrimination made in behalf of the Union workers, within a week after the return to work of the Union girls.

10. There is evidence that a number of the Union girls, after they returned to work on October 10, were placed on operations other than those on which they had previously been engaged; that such transfer of operation or change of type of work, in all cases was accompanied by a diminished weekly pay check either because the new work was in the smaller rate bracket or because their unfamiliarity with the new type of work necessarily diminished their efficiency and speed; that in no case was a non-union girl so transferred but rather, remained at her old machine or operation.

III. THE UNFAIR LABOR PRACTICES

11. The complaint alleges and the answer denies, that the respondent after October 10, 1935, engaged in unfair labor practices by its refusal to reinstate Louise Villanova, Lena Stallone, Antoinette Verruzzia, Millie Cafora, and Lucille Seligson, and its discharge of Olympia DeBiase, Sylvia Beres, Grace Laeta, Anna Ceponis, Margaret Catapona, Margie Andruzzoia, Ray Bernstein and Jennie Pasqua. No evidence was presented with respect to Louise Villanova, Lena Stallone, Olympia DeBiase, Grace Laeta, Anna Ceponis, Margaret Catapona, Margie Andruzzoia and Jennie Pasqua. The evidence shows that another employee, Millie Cafora, was reinstated prior to the time of the hearing. The complaint as to those persons will be dismissed.

12. *Verruzzia.* Antoinette Verruzzia, 16 years old, had obtained employment with the respondent the latter part of August, 1935. This was during the summer school vacation period. She had worked there about three weeks when she went out on strike with some of her co-workers. During the period of the strike the school term had commenced, and under the law of the State of New York, a person under 17 years of age must obtain a certificate before being permitted to engage in industrial work. Such a certificate is granted only upon application signed by the prospective employer of the applicant. On October 10, the day after the strike settlement, Miss Verruzzia asked Isadore Gerber to sign her application for the certificate and he replied: "You were out on strike. I don't want to have anything to do with you." She was not reemployed.

Seligson. Lucille Seligson was a member of the shop committee and had appeared before Isadore Gerber protesting the refusal to reinstate certain Union members. She had also been approached by Isadore Gerber to use her influence to get the Union girls to sign up with the so-called company union (which is discussed below) but had refused to do so. On October 17 her machine failed to function properly. She reported it to the machinist who, after a talk with Isadore Gerber, told her that a new part was needed. She was not permitted to work on any other machine while her machine was being repaired, although on numerous previous occasions such a substitution had been made. She went home and returned in the afternoon and also twice on each of the next two days. Although she was refused permission to continue on other machines which were unoccupied, the respondent was engaging new girls and placing them to work on such machines.

Bernstein. Ray Bernstein had worked for the respondent about two years as a packer. On October 18, more than a week after the Union girls returned to work, she was approached by Morris Gerber, and asked to join the so-called company union. She refused, stating that she was going to join the Union. That afternoon she became a member of the Union.

Miss Bernstein could not write very well and during her entire employment had received the aid of the other girls doing the same work, as well as the aid of the forelady, in making out her job tickets. This assistance had been given to her with the knowledge of the respondent's officers. When she came to work on Monday, October 21, Morris Gerber told her that she would have to make out her own tickets. When she protested that she was unable to make out such tickets and that the girls would have to continue assisting her, he replied that they would not permit any further assistance and that those were his orders from the office. He suggested that she go to

the office and see Isadore Gerber, which she did. Isadore Gerber told her to "go upstairs and stick to my girls, be with them and everything will be all right". He also suggested that she tear up her Union book. She refused to withdraw from the Union and left the plant.

Beres.—The same morning, October 21, Morris Gerber approached Sylvia Beres and suggested that she sign up for membership in the so-called company union and she refused. He came back later and told her that Isadore Gerber wanted to see her, but she refused to go to see him. After the girls returned from lunch, Isadore Gerber ordered Katherine Fasulo, the forelady, not to give her any more work. When she inquired why she was not given any more work the forelady answered, "I am sorry, it was the orders from the boss, you will have to go home." She lingered at her machine a short time and Mr. Gerber said, "Sylvia Beres, get out. You be the first one to get out."

Miss Beres then told Miss Jordan, the chairlady of the shop committee, what had happened. Miss Jordan asked the forelady why Sylvia Beres was not being given work. The forelady referred her to Edward Gerber, superintendent, who told her to "sit down and mind your own business". When she protested he told her, "Get the Hell out of here." Isadore Gerber, who was nearby, shouted, "Marie Jordan, get your Union and get out. You are all fired." The following 42 Union girls thereupon left the plant: Caroline Louella, Mildred Eremich, Mildred Faleo, Filomeno D'Amanzo, Anna Catapona, Virginia Torre, Betty Usuka, Blanch Plockot, Antoinette Zizas, Margaret Catapona, Rose Barone, Millie Varruzi, Margie Andruzza, Stella Zanickouski, Josie Wastrangelo, Angie Santora, Sadie Ciorciora, Louise Villanova, Nettie Marone, Christine Marone, Catherine Minerva, Anna Kivyta, Connie Silano, Anna Millicci, Blanche Guerin, Margerate Torre, Minnie Torre, Margerite Guentano, Ester Weinstein, Grace Laeta, Rose Richardi, Bridget De Piano, Marguerite Caranonica, Antoinette Mayo, Fannie Liguordi, Kate Ramminger, Filomeno Esposito, Elaine Sanarvage, America Fiorino, Adele Ceponis, Anna Ceponis, and Marie Jordan.

Thereafter the employees who had been discharged or locked out picketed the plant, and as far as the record discloses were still doing so at the time of the hearing.

13. By the discharges and refusals to reinstate, as above set forth, the respondent discriminated in regard to hire and tenure of employment and thereby discouraged membership in the Union.

14. By the discharges and refusals to reinstate, as above set forth, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. DOMINATION AND INTERFERENCE WITH THE FORMATION OF LABOR ORGANIZATION

15. The complaint alleges that the respondent initiated, formed and dominated a labor organization. The evidence in this respect shows that on two or three occasions between October 16 and 19, the power in the plant was shut off and speeches were made by the respondent's officers or agents urging the employees to sign up in what was called a company union. Many of the Union girls were individually requested to join. Prospective inducements in the nature of reduced dues, parties, sick benefits and increased work rates were offered. All of the non-union girls signed up. On two occasions the shop committee was either called to the office by the respondent's officers or agents, or otherwise approached, to use its influence to get the Union girls to abandon their Union and come into the so-called company union. All these overtures were met with a firm refusal on the part of the Union girls.

16. It is significant that these approaches were made the day after the first protest was made to the respondent concerning its failure to rehire certain Union girls and also after the shop committee had protested against discriminations and within one week from the time the respondent signed an agreement wherein it recognized the Union. We are led to the conclusion that after the Union workers had exercised their rights under the agreement, and after their shop committee began to function in their behalf, the respondent resolved to destroy the Union.

17. There is evidence that the respondent, through its officers and agents, actually obtained the signatures of some of its employees to some instrument. The evidence does not indicate what written matter the instrument contained or the nature of the instrument. Esther Weinstein testified that Morris Gerber suggested to her that she "sign up our contract". There is no evidence that any labor organization was in fact organized, or that the respondent actually gave any of the support or benefits it promised to give. However, the evidence shows that the respondent did make a determined effort to initiate a labor organization and to dominate and interfere with its formation.

In our opinion, Section 8, subdivision (2) of the Act forbids domination or interference not only where it is successful, and a labor organization is actually formed, but also makes it an unfair labor practice where the domination or interference is unsuccessful. In this case, the respondent was unsuccessful because of the firmness of its employees. Since the Act is remedial, it is appropriate to require the respondent to cease and desist from unfair labor practices which may, at some future time, be more successful.

We find that the respondent dominated and interfered with the formation of a labor organization, and that by so doing, it interfered with, coerced and restrained its employees in the exercise of the rights guaranteed in Section 7 of the Act.

18. It is significant that although the witnesses for the Board made definite statements of discrimination and coercion on the part of the president, vice president and superintendent and the foreman, none of these men, all officers of the respondent and all apparently available, was produced to contradict or deny such pointed and damaging testimony. As a matter of fact, Edward Gerber, superintendent, was present at the hearings, yet he did not take the stand.

Apart from Meyer Gerber, who apparently had nothing to do with the actual plant operation, but confined himself to the commercial and financial portion of the respondent's enterprise, and whose testimony dealt only with those matters, the respondent produced as witnesses only Katherine Fasulo, the forelady, and two or three obviously unreliable and prejudiced employees.

V. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

19. Interference with the activities of employees in joining and assisting labor organizations leads and tends to lead to labor disputes that burden and obstruct commerce and the free flow thereof. The effects that a labor dispute can have on the operations of a business are shown by the following facts in this case. During the summer months, the respondent manufactures for stock in anticipation of orders in the fall. Generally, however, most of the gloves are manufactured on order. The strike took place at the beginning of the busy season. The respondent began hiring new help to take the place of the Union workers who were out on strike, but it was at least three weeks before it was able to resume normal operations. During the strike there was a 40 per cent curtailment in production, and there was some delay in the receipt and shipment of goods. At least on two occasions, trucking firms refused to accept goods from the respondent on account of the strike.

The discrimination by the respondent in regard to hire and tenure of employment; its interference with, restraint and coercion of its employees in the exercise of the rights guaranteed by Section 7 of the Act; and its domination and interference with the formation of a labor organization, led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

In addition to Antoinette Verruzzia, Lucille Seligson, Ray Bernstein and Sylvia Beres, 42 Union workers have suffered by reason of the respondent's interference with the rights of its employees as guar-

anted in Section 7 of the Act and by its discrimination in regard to hire or tenure of employment. Those Union workers who have not obtained employment elsewhere, are out of work as a consequence of the respondent's wrongful acts. If they are to be put in status quo and if the interference with the Union activities and the discrimination against its employees because of such activities is to cease, the Union workers who went out on strike must be returned to work, even though it may mean that workers hired subsequent to October 21 shall have to be displaced. If all of the Union workers can not be put back to work at one time, then those not so put back to work shall be placed on a preferred list to await jobs as they arise. All Union workers should be put back to work in accordance with their seniority status with the respondent, as shown by its records.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, the Board makes the following conclusions of law:

1. The Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By discouraging membership in the labor organization known as the International Glove Makers Union, Local No. 88 by discriminating in regard to the hire and tenure of employment of Antoinette Verruzzia, Lucille Seligson, Ray Bernstein and Sylvia Beres, and each of them, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

3. By its domination of the formation of a labor organization, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

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

5. 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

On 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, Canvas Glove Manufacturing Works, Inc., and its officers and agents shall:

1. Cease and desist

(a) from in any manner interfering with, restraining, or coercing 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, as guaranteed in Section 7 of the National Labor Relations Act.

(b) from discouraging membership in the International Glove Makers Union, Local No. 88, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

(c) from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it; or from attempting to do so.

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

(a) Offer to Antoinette Verruzia, Lucille Seligson, Ray Bernstein and Sylvia Beres immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) To the extent that work for which the following are available is now performed by persons employed since October 21, 1935, offer employment to the following named persons, on the basis of seniority: Caroline Louella, Mildred Eremich, Mildred Faleo, Filomeno D'Amanzo, Anna Catapona, Virginia Torre, Betty Usuka, Blanch Plockot, Antoinette Zizas, Margaret Catapona, Rose Barone, Millie Varuzzi, Margie Andruzza, Stella Zanickouski, Josie Wastrangelo, Angie Santora, Sadie Ciorciora, Louise Villanova, Nettie Marone, Christine Marone, Catherine Minerva, Anna Kivyta, Connie Silano, Anna Millucci, Blanche Guerin, Margerate Torre, Minnie Torre, Margerite Guentano, Esther Weinstein, Grace Laeta, Rose Richardi, Bridget De Piano, Marguerite Caranonica, Antoinette Mayo, Fannie Liguori, Kate Ramminger, Filomeno Esposito, Elaine Sacarvage, America Fiorino, Adele Ceponis, Anna Ceponis, and Marie Jordan; place those for whom employment is not available on a preferred list to be offered employment as it arises;

(c) Make whole said Antoinette Verruzia, Lucille Seligson, Ray Bernstein and Sylvia Beres for any loss of pay they have suffered by reason of their discharges and refusals to reinstate them by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the time of discharge to the date of such offer of reinstatement, less the amount which each has earned during such period, computed by averaging the wages earned during said period by the employees engaged in the same operations, respectively, as were the above employees immediately prior to the strike which began on September 23, 1935.