

IN THE MATTER OF ISADOR PANITZ, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF YALE UNDERWEAR COMPANY *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, LOCAL NO. 127

Case No. C-39.—Decided April 11, 1936

Underwear Industry—Interference, Restraint or Coercion: expressed opposition to labor organization; persuasion of employees to resign from union—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* disallowed.

Mr. Ernest A. Gross for the Board.

Mr. Isador Panitz and *Mr. Victor Burnham* for respondent.

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

DECISION

STATEMENT OF CASE

Charges having been duly made by the Amalgamated Clothing Workers, Local No. 127, hereinafter referred to as the Union, Bennet F. Schaufler, Regional Director for the Fifth Region, issued a complaint dated December 18, 1935 against Isador Panitz, doing business under the trade name of Yale Underwear Company, hereinafter referred to as the respondent. The complaint and notice of hearing thereon were duly served upon respondent on December 18, 1935 in accordance with Article V, Section 1, of National Labor Relations Board Rules and Regulations—Series 1. The complaint alleged:

That the respondent discharged and refused to reinstate Ellsworth Kattenhorn and Ernest Kattenhorn for the reason that they joined and assisted the Union and engaged in concerted activities with other employees in the Baltimore plant for the purpose of collective bargaining and other mutual aid and protection; and that at various times since July 5, 1935 the respondent did, through his agents, Victor Burnham, Superintendent, and Mrs. Seager, Forelady, urge, persuade, and warn his production employees to resign or refrain from joining the Union, threatening loss of work, layoff, and discharge if they failed to do so; that by these activities the respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing his employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did discriminate and is discriminating in regard to the hire, tenure of employment, and terms and conditions of employment of the

aforsaid persons and each of them, and did discourage and is discouraging membership in the Union, and by said acts did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935.

Pursuant to the notice of hearing, A. Howard Myers, Trial Examiner, as agent of the Board, conducted a hearing on December 30, 1935, at Baltimore, Maryland. The respondent participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

The Trial Examiner filed an intermediate report, finding and concluding that the respondent had committed the unfair labor practices as charged in the complaint and recommending that Ernest and Ellsworth Kattenhorn be reinstated. The respondent filed a written brief taking exception to the report, on the grounds that the activities of the respondent not being interstate commerce, the Act is not applicable to him, and that the evidence does not support the findings. On February 11, 1936, pursuant to his request, counsel for the respondent, orally argued the case before the Board in Washington.

Upon the record as thus made, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. ISADOR PANITZ, DOING BUSINESS AS THE YALE UNDERWEAR COMPANY

The respondent is the proprietor of the Yale Underwear Company, a proprietorship, located in Baltimore, Maryland. The Yale Underwear Company manufactures running pants, shirts, and union suits for men and boys. It secures all its cotton goods from out of the state. It sells practically all of its product through a sales agency in New York City, which distributes the goods throughout the country.

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

II. THE ACTIVITY OF THE UNION

In April, 1934, the respondent had 400 employees. The Union, a labor organization, organized the cutting department, a group of about 22 persons—all of whom joined the Union at this time—and

called them out on strike. This was part of a city-wide strike of underwear workers called by the Union. The strike lasted ten days. During that time some strikebreakers were employed in the cutting department. The strike was settled by agreements entered into between "the employers and the employees", a Union official executing the contract for the employees, providing for reinstatement and certain wage increases. All 22 persons in the cutting department returned to the plant. The strikebreakers were dismissed upon the demand of the Union. Thereafter the respondent's business decreased and it wished to lay off some men. It consulted the Union. The Union insisted on a sharing of the work among shifts. The force, at first, was divided into two shifts; later, as work fell off, into three.

III. DISCHARGE OF THE KATTENHORNS

By July, 1935 the respondent was employing only about 5 persons in the cutting department. On September 4th the Kattenhorns were told that work was so slack that each of them could work only in alternate weeks. A few days later they were told that they were not to return to work at all. The respondent claims that they were discharged because of their incompetence and negligence; it is alleged that their Union membership was the cause.

Ellsworth Kattenhorn. Ellsworth Kattenhorn began to work for the respondent in 1928. He worked always in the cutting department. He began at \$6.50 per week and by slow and frequent raises reached \$18 per week. His last raise was in April, 1934 as a result of the strike settlement. About two weeks before they were laid off, both Kattenhorns were promised a raise when business improved. Ellsworth has performed nearly all of the operations in the cutting room. He has been favored in the distribution of work. After the strike he received more work than most others in the cutting department. In July, 1935, when respondent attempted to explain to the Union the lay off of certain men who did cutting only, he pointed out that Ellsworth and Ernest were all around workers who could do every operation in the cutting department and that they were more useful to him.

Ellsworth (who is 21 years old) had been reprimanded on occasion for careless workmanship and for improper conduct. The Union had once offered to discipline him but the respondent said, "He did not want it, he was a good boy, and all he wanted was for us (the Union) to tell him not to do it again." Ellsworth was, apparently, quick-tempered at times and insolent. The respondent now recalls these occasions but cannot rely seriously upon them, since they happened long before the discharge and were obviously forgiven. More

serious charges are that he failed often to keep a careful check of inventory under his supervision, that he cut samples improperly, and that he was overlong at times on certain operations. Burnham, the superintendent, stated that Ellsworth had often been guilty of these faults, but that the most recent instances of negligence he discovered only after the boys were "off completely."

◦ *Ernest Kattenhorn.* Ernest had worked off and on for the respondent since 1924. He had been employed steadily since 1932. He started working at \$7 per week and was making \$20 when he was laid off in September. It would appear that his last raise to \$20 was directly after and as a result of the strike. He learned nearly all of the operations in the cutting room—marking, spreading, and finally, cutting. The respondent's complaint as to Ernest is that he mis-marked goods from time to time, that he talked about the Union on the job, and that on pay days he urged, during work hours, the men to pay their Union dues. As in Ellsworth's case, these mistakes and faults had occurred from time to time in the past but the most recent instance of mis-marking was not discovered by Burnham until after the boys were laid off.

In sum, both Kattenhorns had been treated and considered as all around workers. Apparently their past faults did not count heavily against them with the respondent, because as late as July, 1935 he had told the Union how valuable they were and just two weeks before the lay-off, he had promised them a raise. The most recent errors of workmanship were not discovered until after their release. As a matter of fact, the reason given for the lay-off was lack of work.

The Kattenhorns were the only surviving Union members of the original 22 in the cutting department. Ernest was an active member; he talked about the Union on the job; he urged others to pay their dues. Ellsworth was not an active member. At one time he had attempted to give the impression that he was no longer a member. He had been told by Burnham that, "If you will drop the Union it will be better for you". About four months after the strike Ernest, too, was told that he would get steady work if he dropped the Union. He was reprimanded, on occasion, for talking about the Union during working hours, though conversation at work was customary. The respondent felt some resentment against the Union, because it required him to stagger his help and would not freely permit lay-offs. Apparently, he considered himself called upon, by reason of the strike settlement, to consult with the Union on these matters. "I could not lay this one off and I could not do that, and I came to the conclusion I had made a bad bargain but had to make the best of it." After laying off the Kattenhorns, he hired non-Union men and at present, among the five to seven in the cutting

department, there are no Union men. The respondent has thus rid himself of his bargain. He has taken advantage of the fluctuating and uncertain circumstances of his business to be free completely of Union men, so that no longer will he find it necessary to deal with or consult with the Union.

We find that respondent has discriminated with respect to hire and tenure of employment against Ellsworth and Ernest Kattenhorn for the purpose of discouraging membership in the Union, and that by such acts, respondent has interfered with, restrained and coerced its employees in the exercise of the rights of self-organization guaranteed in Section 7 of the Act. We find, further, that such acts tend to labor disputes burdening and obstructing commerce and the free flow thereof.

Under the circumstances of this case we believe that it will be appropriate to require respondent to offer employment to Ellsworth and Ernest Kattenhorn but not to require payment of what wages may have been lost by reason of their discharge.

CONCLUSIONS OF LAW

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

1. Amalgamated Clothing Workers of America, Local No. 127, is a labor organization, within the meaning of Section 2, subdivision (5).

2. By its discharge of Ellsworth and Ernest Kattenhorn, and each of them, for the reason that they and each of them joined and assisted the Union, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By its discharge of the persons aforesaid, as set forth in paragraph 2 hereof, and each of them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in the Union, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of said Act.

4. The unfair labor practices in which the respondent has engaged and is engaging, as aforementioned, are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of said Act.

ORDER

On the basis of the findings and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders the respondent, Isadore Panitz, doing business as Yale Underwear Company:

1. Cease and desist from in any 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from discouraging membership in the Union 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;

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

(a) Offer to Ellsworth and Ernest Kattenhorn employment in the respective positions formerly held by them; and

(b) Post immediately notices to its employees in conspicuous places in its shop stating (1) that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, Amalgamated Clothing Workers of America, Local No. 127, or persons assisting said organization or otherwise engaging in Union activity, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.