

In the Matter of SEGALL-MAIGEN, INC., A CORPORATION and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL NO. 50

Case No. C-35.—Decided May 14, 1936

Ladies Wearing Apparel Industries—Strike—Discrimination: non-reinstatement following strike—*Reinstatement Ordered, Strikers:* discrimination in reinstatement; displacement of employees hired during strike; preferential list ordered, including—*Back Pay:* awarded—*Unit Appropriate for Collective Bargaining:* production employees.

Mr. Gerhard P. Van Arkel for the Board.

Mr. Martin G. Stein, of Philadelphia, Pa., for respondent.

Mr. M. Herbert Syme, of Philadelphia, Pa., for the Union.

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

DECISION

STATEMENT OF CASE

On December 9, 1935, the International Ladies' Garment Workers' Union, Local No. 50, hereinafter referred to as the Union, filed with the Regional Director for the Fourth Region a charge that Segall-Maigen, Inc., of Philadelphia, Pennsylvania, had engaged in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On December 31, 1935, the Board issued a complaint against Segall-Maigen, Inc., hereinafter referred to as respondent, the complaint being signed by the Regional Director for the Fourth Region and alleging that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7), of the Act. In respect to the unfair labor practices, the complaint alleged in substance:

1. That the employees of respondent engaged in production, except those employed in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act;

2. That on or about October 9, 1935, a majority of the employees in said unit had designated the Union as their representative for purposes of collective bargaining with respondent, such designation having been made by accepting membership in and paying dues

to the Union; that, by virtue of Section 9 (a) of the Act, the Union has since that time been the exclusive representative of all employees in said unit for purposes of collective bargaining; that on or about October 9, 1935, the Union requested respondent, through its officers, agents and employees, to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment; that on said date and at all times thereafter, respondent refused and has refused to bargain collectively with the Union as the exclusive-representative of all the employees in said unit.

3. That respondent on or about October 9, 1935, terminated the employment of, and at all times since that date has refused to reinstate, 14 of its employees; namely, Ethel Betteridge, Rita Biscardi, Julia Cappuccio, Rose Cohen, Elvira Cuarato, Mildred Cuarato, Laura Freeman, Sarah Harvitz, Helen Janson, Virginia Paoloni, Angelina Petronella, Rose Rosen, Hazel Ruben and Sara Weiss, for the reason that they joined and assisted a labor organization and engaged in concerted activities with other employees of respondent for the purpose of collective bargaining and other mutual aid and protection, thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

4. That the unfair labor practices of the respondent have led and tend to lead to labor disputes affecting commerce as defined by the Act.

The complaint and accompanying notice of hearing were duly served in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. Respondent filed its answer to the complaint, denying that it was engaged in interstate commerce within the meaning of the Act, and denying the jurisdiction of the Board; denying that it terminated the employment of the employees named in the complaint, and alleging that they left voluntarily and without cause and refused to return to work within a reasonable time thereafter; denying that it has discriminated against, or interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; and admitting its failure to bargain collectively with the Union, but alleging that the Union did not represent a majority of respondent's employees.

Pursuant to the notice, a hearing was held in Philadelphia, Pennsylvania, on January 15 and 16, 1936, before Benedict Wolf, Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded to all parties. At the close of the testimony for the Board respondent moved to dismiss the complaint. The motion was denied by the Trial Examiner. The ruling of the Trial Examiner is hereby affirmed.

On January 14, 1936, the Board, acting pursuant to Article II, Section 35, of said Rules and Regulations—Series 1, directed that the proceedings be transferred to and continued before it. Upon due notice, the Board held a further hearing on February 28, 1936, at Washington, D. C., at which time and place further evidence was taken.

Upon the record in the case, the stenographic report of the hearings and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearings, the Board makes the following:

FINDINGS OF FACT

I. THE LADIES' NECKWEAR INDUSTRY

In December, 1934, there were 120 factories engaged in the manufacture of ladies' neckwear, four of which were located in Philadelphia. At that time, there were about 4,000 workers employed in the industry.

Silks, satins, cottons and woolens are the principal raw materials used by the industry in the manufacture of its finished product. These materials are purchased either from converters, most of whom are located in New York City, or directly from manufacturers, most of whom are located in and around Paterson, New Jersey. The output of the industry is sold principally to chain stores, mail-order houses and large department and retail stores.

In the New York area, labor costs represent about one-third of the entire cost of the finished product. Competition in the industry is very keen. Manufacturers in areas where labor is unorganized and where the rates of pay are low and the hours of employment long, have been successful in diverting business from manufacturers in areas where labor is organized and where higher standards of wages and hours are maintained.

II. RESPONDENT'S BUSINESS

Segall-Maigen, Inc., is a Pennsylvania corporation engaged in the production, sale and distribution of ladies' neckwear. Respondent has its factory and principal office in Philadelphia, Pennsylvania.

Cotton goods, rayon, laces and silks are the principal raw materials used by respondent in the manufacture of its finished product. About 75% or 80% of these raw materials are purchased by respondent in New York City, and are shipped to Philadelphia, either by express or motor truck.

Respondent has a show room and sales office in New York City, where it employs two salesmen. Orders are placed at the New York

office and are either carried or mailed to the main office at Philadelphia. Orders are also solicited by personal contact or by mail. Mr. Segall, president of respondent, whose office is in Philadelphia, testified that he goes to New York every day in the week, and that he travels to Baltimore, Maryland, Washington, D. C., and to other points as business might require.

Respondent manufactures about 90% or 95% of its total product on specific orders. Respondent sells mainly to retailers and a few jobbers. It also sells to mail-order houses, some of whom issue catalogues wherein reference is made to respondent's line of goods.

Of its finished products, respondent ships 75% by parcel post, and the remainder either by motor truck or express. Mr. Segall was unable to state what percentage of its goods respondent ships in interstate commerce. He did testify, however, that respondent ships goods "all over the country, that covers the entire United States." "Sometimes we might ship goods in the South. . ." "Sometimes we may ship goods to the Coast." He also testified that on a year round basis, respondent's product is evenly distributed among the various sections of the country.

The aforesaid operations of respondent constitute a continuous flow of trade, traffic and commerce among the several States.

III. THE RESPONDENT AND THE UNION

International Ladies' Garment Workers' Union, Local No. 50, is a labor organization which is composed, among others, of workers in the ladies' neckwear industry in Philadelphia. Morris Fishman, business agent of the Dressmakers' Joint Board of the International Ladies' Garment Workers' Union, was, at the time the events in this case took place, the Union official assigned to organizing the ladies' neckwear workers in Philadelphia.

In July, 1935, the wages of all of respondent's employees engaged in production, except the cutters, were reduced by \$2 a week with the understanding that when business picked up in September, 1935, the amount of the reduction would be restored. In September, some of the girls had the amount of their reductions partially or totally restored, but others did not.

Before September, 1935, respondent's employees worked eight hours a day, five days a week, and were paid for overtime. On Friday, September 13, the forelady told the employees that they would have to work a half day on the next day, Saturday, the 14; when asked by the employees if they would get paid, she answered that they would. The work week regularly began on Friday and ended on Thursday, and the employees were paid on the following Saturday. When the employees received their wages on Saturday, Sep-

tember 21, they found that they had not been paid for the overtime they had worked on Saturday, the 14th. They spoke to Mr. Maigen, secretary-treasurer of respondent, and he said that there would be no pay for overtime because they were now working 45 hours a week instead of 40 hours for the same weekly wage. When they attempted to discuss the matter further, Mr. Segall, president of respondent, called Maigen away.

On Monday morning, September 23, the employees came into the factory but did not actually begin to work. The forelady reported this to Segall, who came out and asked what the trouble was. He was told by the girls that they wanted to know when they would all get their pay cuts back and that they objected to the increase in hours without any increase in pay. He told them that if they did not like it, to get out. Fourteen girls thereupon walked out. They went to the office of the International Ladies' Garment Workers' Union, Local No. 50, and became members of the Union.

That afternoon Morris Fishman and Max Wexler, business agents of the Dressmakers' Joint Board of the International Ladies' Garment Workers' Union, endeavored to arrange a conference with respondent. Maigen told them that he would not assume responsibility for a conference, but that he would get in touch with Segall who was in New York at the time. At five o'clock the following day, Tuesday, September 24, Wexler tried to arrange a conference with Segall in an effort to settle the strike and return the union employees to work; but Segall refused to meet with him. Pickets were then placed in front of respondent's factory.

The Union representatives continued their efforts to settle the strike, but, receiving no encouragement or cooperation from respondent, prevailed upon Mr. Erlichman, a dress manufacturer and an intimate friend of Segall, to arrange for a meeting between the parties. As a result of Erlichman's intercession, a meeting was held at Erlichman's office three or four days after the walkout. Those present were Segall, Fishman, Erlichman and Wexler. At this conference Segall was asked to reinstate the Union employees and to sign a Union agreement. This was refused by Segall with the statement that he would not negotiate further until the rest of the industry in Philadelphia was organized.

There were five or six subsequent meetings between the Union and respondent. At these meetings the Union abandoned its efforts to procure the signing of a Union agreement, but bent all of its efforts toward the reinstatement of the Union employees. The requests for reinstatement were met with refusals on the part of officials of respondent, who stated that the girls would not be reinstated if they came sponsored by the Union. Mr. Segall testified that "if these girls would come in one by one, we wouldn't have turned them down."

IV. THE UNFAIR LABOR PRACTICES

A. *Refusal to reinstate*

The walkout by the 14 girls was the result of their dissatisfaction with the increase of working hours from 40 to 45 hours a week and the failure of respondent to restore to all of its employees the pay cuts which had been put into effect in July, 1935, and which the respondent had promised to restore. Because of this dissatisfaction and because of their inability to exert sufficient pressure individually to bring about a change as to those matters, the employees, who up to the time of the walkout were not members of the Union, joined the Union in an endeavor to exert concerted pressure on respondent.

The first effort on the part of the Union to effect the reinstatement of the 14 girls who had walked out was made on September 24, 1935. Twenty girls were employed subsequent to this date and prior to the hearing before the Trial Examiner. Two of these girls had had previous employment with respondent for two or three weeks, and one had worked for a longer period but had less seniority than any of the Union employees. The other 17 had either not worked for respondent before, or had been engaged for the first time immediately after the strike, had had their employment terminated, and had then been rehired after September 24. At the hearing Mr. Segall admitted that the reason the Union employees were not reinstated after their repeated requests to be allowed to return to work was because "we have taken on other girls who are now working in the places of those walking out."

Respondent makes no claim that the Union employees were inefficient. Segall testified that they were capable and "good workers." That fact, plus their long service of employment and experience, would, all things being equal, have prompted respondent to reinstate the 14 girls when they requested reinstatement. Respondent was in fact compelled to discharge a number of the new employees because of inefficiency. Thus, there was every reason why respondent should have preferred employees who were experienced and efficient. On all the evidence, it is clear that respondent refused to reinstate the 14 girls because they had joined the Union, had picketed respondent's factory, and had designated the Union to act for them.

We find that by refusing to reinstate the Union employees after their repeated requests for reinstatement and when jobs for them were available, and by filling such jobs with new employees or employees with less seniority, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has discriminated in regard to the hire and tenure of its employees, thereby discouraging membership in a labor organization.

B. *Collective bargaining*

1. The bargaining unit

The production employees at respondent's factory, excepting cutters and those engaged in a clerical or supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining.

2. Majority representation by the union

The Act provides that it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. Section 9 (a) provides that representatives designated or selected by the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in such unit.

The Union contended that there were 27 production employees in the factory, and since there were 14 Union employees, the Union was the exclusive representative of the production employees for the purposes of collective bargaining. Respondent offered testimony that it employed between 50 and 60 production workers.

Although we have found that the production employees of respondent, exclusive of the cutters, are a unit appropriate for the purposes of collective bargaining, we cannot find that a majority of the employees in such unit did select or designate the Union as their representative for the purposes of collective bargaining. Taking the payroll of respondent for the period commencing with the week of January 18, 1935, and counting only those who have an appreciable length of service, we find that there were 35 employees regularly engaged as production employees, exclusive of the cutters and of the clerical and supervisory staffs. Since only 14 girls joined the Union, the Union has not been designated by a majority of the employees in the appropriate unit.

The allegation in the complaint that respondent refused to bargain collectively in violation of Section 8, subdivision (5) of the Act, will therefore be dismissed.

V. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

Prior to August, 1933, the ladies' neckwear industry found itself in a chaotic condition. Wages had been cut to the point where operators were earning between seven and eight dollars for a week of 44 to 48 hours. This situation had brought about a condition of cut-throat competition, with the result that those employers who tried to maintain a decent standard of wages and hours were faced with bankruptcy because of the fact that they were unable to meet the competition of less scrupulous employers. In an endeavor to meet this situation, the International Ladies' Garment Workers' Union con-

ferred with the employers in the industry. As a result, an agreement was entered into between the International Ladies' Garment Workers' Union and the National Women's Neckwear and Scarf Association, Inc., which represented about 75 employers in the City of New York. By this agreement, it was sought to eliminate the sweat shop condition in the industry. Among other matters, the agreement provided for arbitration of all matters which lead or tend to lead to labor disputes. This agreement was renewed in October, 1934, and again in October, 1935, and is still in existence.

Since this agreement was entered into in 1933, there have been only 20 or 25 disagreements involving employers who are signatories to the agreement, all of which, with one exception, have been adjusted under the terms of the arbitration clause. In the case of the one exception, 12 employees struck because the employer was attempting to discharge a cutter who had complained that, contrary to the agreement, he was not being paid time and one-half for overtime. The employees struck only after the employer had refused to abide by the ruling of the impartial labor board set up under the agreement.

In 1934 and in January to July, 1935, inclusive, interference with self-organization of employees by employers in the wearing apparel industries resulted in strikes and lockouts involving 3703 workers and 57,181 man-days of idleness.

Respondent's failure to reinstate the Union employees disrupted respondent's production schedule and affected its business of manufacturing and distributing ladies' neckwear in interstate commerce, thus burdening and obstructing commerce and the free flow of commerce.

We find that the aforesaid acts of the respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Respondent's factory, as far as the production work was involved and excepting the cutting department, was divided into the following departments: operating, pressing, trimming and packing. When work at respondent's factory reached the point where lay-offs became necessary, respondent applied the seniority rule in effecting lay-offs. Those with the least length of employment were the first to be laid off, while those who were in respondent's employ for longer periods of time were laid off last. The seniority rule was also used in reemploying the workers; those with the longest service were called back to work first.

On the basis of a tabulated list of all of respondent's production employees, excepting the cutters, submitted by respondent, we find

that the 14 Union employees had the seniority rating indicated opposite their respective names. For the purposes of this finding, it is not necessary to tabulate the names of those employees with a lesser seniority rating than that of Rose Cohen:

Seniority rating	Employee	In respondent's employ
1	Jackie Longo	19 months
2 ¹	Mildred Cuarato	18 months.
3	Helen De Bernardis	18 months.
4	Sonia Berdit	18 months.
5	Janet De Bernardis	17 months.
6 ¹	Sarah Harvitz	17 months.
7 ¹	Helen Janson	17 months.
8 ¹	Sarah Weiss	17 months.
9	Margaret Zochi	17 months.
10	Teresa De Bernardis	16 months.
11 ¹	Virginia Paoloni	16 months.
12	Chickie Zochi	16 months.
13	Lucille Longo	15 months.
14	Marie Murphy	15 months.
15	Edna Smith	14 months.
16 ¹	Angelina Petronella	13 months.
17	Tulie Sees	11 months.
18	Esther Carvello	10 months, 1 week.
19 ¹	Julia Capuccio	10 months.
20	Chinzi Carvello	10 months.
21 ¹	Rose Rosen	9 months.
22	Sarah Varley	8 months, 2 weeks.
23 ¹	Elvira Cuarato	8 months.
24 ¹	Laura Freeman	8 months.
25	Janmie Klasky	8 months.
26 ¹	Rita Biscardi	7 months, 1 week.
27 ¹	Ethel Betteridge	7 months.
28 ¹	Hazel Rubin	7 months.
29	Elizabeth Madway	7 months.
30	Anna Perri	6 months.
31	Lilhan Korr	6 months.
32	Rose Letteriello	5 months.
33 ¹	Rose Cohen	18 weeks.

¹ Union employee

None of the 14 Union employees who have been discriminated against has obtained any other employment. By virtue of Section 10, subdivision (c) of the Act, the Board has authority to order respondent to offer immediate reinstatement to these employees. The jobs of these Union employees have been filled by employees engaged after the request for reinstatement on September 24, 1935, or by employees with less seniority as of September 23, 1935 when the strike began. Since respondent has committed unfair labor practices in the refusal to reinstate these Union employees, and since such affirmative action is necessary to effectuate the policies of the Act, the Board will enter an order requiring respondent to offer these employees immediate reinstatement to their former positions.

Operators were not put into other departments to help out when the operating department was slack. However, employees were constantly transferred from one to another of the remaining three departments. No great degree of specialized skill is required in these three departments, and in any one week, an employee might work in all three departments, depending on the work-load. Therefore, if

necessary to comply with this order, respondent shall dismiss those operators at present in its employ who have been engaged since September 24, 1935, or who, on September 23, 1935, had less seniority than the operators among the 14 Union employees, and shall dismiss those employees in the pressing, trimming and packing departments at present in its employ who have been engaged since September 24, 1935, or who, on September 23, 1935, had less seniority than those of the 14 Union employees who were employed in any of these three departments on September 23, 1935. For the purpose of the order of reinstatement herein contained, and of the calculation of seniority, the pressing, trimming and packing departments shall be considered as one department.

CONCLUSIONS OF LAW

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

1. By its refusal to employ Ethel Betteridge, Rita Biscardi, Julia Cappuccio, Rose Cohen, Elvira Cuarato, Mildred Cuarato, Laura Freeman, Sarah Harvitz, Helen Janson, Virginia Paoloni, Angelina Petronella, Rose Rosen, Hazel Rubin, Sara Weiss, in order to discourage membership in a labor organization, respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

2. By interfering with and restraining its employees in the exercise of their rights to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act, respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. Respondent's production employees, excepting cutters and those engaged in a clerical or supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. The Union not having been designated as their representative by a majority of respondent's employees in an appropriate unit, is not, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

5. Respondent has not engaged in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

6. The unfair labor practices in which respondent has engaged and is engaging 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 respondent, Segall-Maigen, Inc., and its officers and agents, shall:

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

2. Cease and desist from discouraging membership in the International Ladies' Garment Workers' 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) To the extent that work for which the following are available is now performed by persons engaged after September 24, 1935, or by employees with less seniority as of September 23, 1935, offer employment to the following named persons on the basis of seniority as set forth in this decision: Ethel Betteridge, Rita Biscardi, Julia Cappuccio, Rose Cohen, Elvira Cuarato, Mildred Cuarato, Laura Freeman, Sarah Harvitz, Helen Janson, Virginia Paoloni, Angelina Petronella, Rose Rosen, Hazel Rubin, and Sara Weiss; and place those for whom employment is not available on a preferred list, prepared on the basis of seniority as set forth in this decision, to be offered employment as it arises;

(b) Make whole such of those persons named in paragraph (a) above who receive employment, for any loss of pay they have suffered by reason of respondent's refusal to reinstate them, by payment to each of them, respectively, of a sum of money equal to that which each would have earned had he been employed in lieu of the person who has worked in his place since September 24, 1935, less the amount which each has earned during such period.

(c) Post immediately notices in conspicuous places in its factory stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

4. The allegations in the complaint that the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the National Labor Relations Act, are dismissed.