

In the Matter of NATIONAL CASKET COMPANY, INC. and CASKET
MAKERS UNION 19559

Case No. C-11.—Decided June 20, 1936

Casket Industry—Interference, Restraint or Coercion: threat to transfer plant; persuading employees to resign from union; villifying union organizers and leaders; expressed opposition to labor organization, threats of retaliatory action; propaganda against union—*Discrimination:* discharge; refusal to reinstate following discriminatory discharge prior to July 5, 1935—*Remstatement Ordered, Non-Strikers:* employee discharged; employees refused reinstatement following discriminatory discharge prior to July 5, 1935—*Back Pay:* awarded.

Mr. Daniel B. Shortal for the Board.

Greene & Hurd, by *Mr. Richard T. Greene* and *Mr. Giddings Howd*, of New York City, for respondent.

Mr. Joseph Rosenfarb, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 23, 1935, Casket Makers Union 19559, hereinafter called the union, filed with the Regional Director for the Third Region a charge that the National Casket Company, Inc., Oneida, New York, hereinafter called the respondent, had engaged in and was 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. On November 4, 1935, the Board issued its complaint, signed by the Regional Director for the Third Region. The complaint and accompanying notice of hearing were duly served upon the respondent and the union. The complaint alleges, in substance, that the respondent on different dates, discharged Rudolph Lechner, Anson Harrington, Clarence D. Snyder, George W. Brooks, Fred W. Corbin, John R. Brooks, Leo F. Schmutz, and has refused and is refusing to employ and to reinstate them for the reason that they had joined and assisted the union and had engaged in concerted activities with other employees in the Oneida plant of the respondent for the purpose of collective bargaining and other mutual aid and protection.

Thereafter, the respondent filed its answer to the complaint. The answer denied that it discharged or laid off the employees mentioned in the complaint or refused to reinstate them for the reason that they joined and assisted a labor organization and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection, and alleged that, with the exception of Leo F. Schmutz, who was discharged for cause, all the employees were laid off. For a separate defense, the respondent alleged that the National Labor Relations Act is unconstitutional and void as applied to the circumstances of this case.

Pursuant to the notice, a hearing was held in Syracuse, New York on November 25, 26 and 27, 1935, before William R. Walsh, duly designated as Trial Examiner by the Board. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

On December 16, 1935, the Board, deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, ordered that the proceedings be transferred to and continued before it in accordance with Article II, Section 35, of National Labor Relations Board Rules and Regulations—Series 1. Thereafter, a brief was filed by counsel for the respondent. Upon the request of the Board, the respondent submitted employment information from its books, and counsel for the respondent agreed that such information would be part of the record in the case.

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

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent has been since August 6, 1890, a corporation organized and existing by virtue of the laws of the State of New York, having a plant and its principal place of business in the City of Oneida, County of Madison, State of New York. It is engaged in the production, sale and distribution of caskets. It has plants for the production of caskets and funeral accessories in various parts of the United States. About 11 of these plants produce wooden caskets. One of these is the plant in Oneida, New York. The selling branches of the respondent are located all over the United States. The respondent is the biggest unit in the industry. An official of the respondent testified that the respondent does 11% of the total business

of the industry, even though the number of burial casket companies increased from 348 to 703 during the depression because of the influx into the casket making business of concerns which were suffering from contraction of their regular business in wood products. It appears from the annual statement of the respondent for the year ending June 30, 1935 that its total assets at that time amounted to \$13,253,530.21, the profit for the year was \$289,885.74, and that dividends paid during the year amounted to \$413,469.00 on preferred stock and \$190,110.00 on common stock.

The Oneida plant of the respondent produces wooden caskets of various types of wood. The greater part of its raw materials, most of which consists of lumber, is obtained from points outside of the State of New York. Some lumber is obtained from Canada and South America. About 33% of the production of the Oneida plant is shipped to points outside of the State of New York.

The caskets manufactured by the Oneida plant are shipped to selling branches of the respondent on order of these branches. With rare exceptions, no caskets are shipped by the Oneida plant directly to the customers of the respondent. The caskets are not entirely completed in the Oneida plant of the respondent. The hardware and lining of the caskets are added at the selling branches of the respondent before sale to funeral directors. Shipments from the Oneida plant to the various selling branches of the respondent involve no money transactions between the plant and the selling branches. The shipments, however, are made in pursuance of an operating plan laid down by the executive officers of the respondent.

In 1932 the net profit on the capital invested in the Oneida plant was a little over one-half of one per cent. In 1933, the net profit was 9%. In 1934, the net profit rose to 15%, due principally to the rise in prices of inventory on hand.

The respondent advertises in publications of national circulation such as the Saturday Evening Post, The Forum and the Woman's Home Companion.

The respondent's operations generally and in the Oneida plant constitute a continuous flow of trade, traffic and commerce among the several States.

II. THE UNION AND ITS ORGANIZATION

In February, 1934, the employees of the respondent in the Oneida plant began to be interested in organizing a union. The employees had several meetings with Michael Walsh, organizer for the American Federation of Labor, at which the purposes and functions of labor organizations were discussed. The employees involved in the

complaint in this case were the leaders of the movement to organize the union. In May, 1934, a charter was obtained from the American Federation of Labor, and Casket Makers Union 19559, a labor organization, was formed. Leo F. Schmutz, Clarence D. Snyder, Fred W. Corbin and John R. Brooks were four of the seven employees of the respondent to whom the charter was issued. The first officers of the union, elected in May, 1934, were Leo F. Schmutz, president, John R. Brooks, vice-president, Fred W. Corbin, treasurer, Rudolph Lechner, financial secretary, and Clarence D. Snyder, trustee.

Frequent union meetings were held, notice of which was given in the local papers. However, no formal notice of the organization of the union was at any time given to the respondent, and at no time did the union request the respondent to bargain collectively. This attempt to keep the organization of the union and its activities secret was explained by the employees of the respondent involved in this complaint as actuated by fear of hostility on the part of the management and a consequent desire to keep union activities under cover until such time as the union was stronger.

All of the production and maintenance employees in the Oneida plant of the respondent were eligible to join the union. The employees involved in the complaint actively solicited members for the union, with the result that in the fall of 1934 the membership consisted of about 60% to 65% of the total of about 265 employees in the Oneida plant. Leo F. Schmutz, the president of the union, testified that thereafter the membership decreased rapidly, as a result of the unfair practices of the respondent, so that at the time of the hearing there were only about seven members, barely sufficient to retain the union charter.

III. THE BACKGROUND OF THE UNFAIR LABOR PRACTICES—THE DISCHARGES

With the exception of Rudolph Lechner, all the employees named in the complaint were discharged before July 5, 1935. Therefore, the refusal to reinstate them after that date and not their discharges is the subject of the complaint. However, it is necessary to consider the circumstances surrounding the discharges because of the light they may throw upon the refusal to reinstate.

In the early part of January, 1935, the employees involved in this case who had been discharged by the respondent and two others, Ben Howe and Theodore Taylor, made a complaint to the Buffalo Regional Labor Board of the old National Labor Relations Board that they had been discriminatorily discharged. Hearings were held before the Regional Board in January, and on March 29, 1935, the old National Labor Relations Board ordered the reinstatement of

Clarence D. Snyder, George W. Brooks, John R. Brooks, Anson Harrington and Fred W. Corbin. Howe and Taylor failed to appear at the hearing in Buffalo, and were later reemployed by the respondent.

IV. THE UNFAIR LABOR PRACTICES

Rudolph Lechner was discharged on July 15, 1935. He had been financial secretary of the union since its formation, and had been active in its organization and in the solicitation of members. He was a member of the shop committee which called upon William A. Knaus, manager of the Oneida plant, relative to the reinstatement of Snyder and Brooks. He has been employed by the respondent for eight years, and was the chief trucker in the plant. His place has now been filled by a new employee.

The reason assigned by the respondent for Lechner's discharge was his habit of tardiness. Lechner admitted that he was often late in the mornings, but testified that although this had been so over a period of years, he had never been warned. Furthermore, he explained that his tardiness did not interfere with his work, since there would not be any work for him anyway for some time in the morning.

On or about July 9, 1935, Harrington, who had been discharged in December, 1934, asked Mr. Knaus to reemploy him, but Mr. Knaus refused. Harrington testified that on this occasion Knaus told him he had made a mistake by listening to radicals like John Brooks, Corbin and Walsh, the organizer for the American Federation of Labor, and that, since he had joined in with them, he would have to take the consequences. Knaus also said that Brooks and the rest of the men made a mistake when they joined the union. Harrington communicated this conversation to Brooks.

Mr. Knaus admitted that he had talked with Harrington, but denied the conversation as related by Harrington. He testified that he offered Harrington a job at other work in the mill which would pay not over 50¢ an hour, but that Harrington refused this offer, saying that he could make more money elsewhere. Harrington denied that such an offer had been made to him.

In August, 1935, John Brooks, then president of the union, delegated Schmutz and Snyder to see Knaus about reinstating the employees who had been discharged. On or about August 19, 1935, Schmutz and Snyder called at Knaus' home. They inquired if they could obtain reemployment if the union were dropped and the past forgotten. Knaus replied that there was no chance for them to be reemployed, since they listened to "the man from Washington," (meaning the investigator for the old Board), and to the organizer of the American Federation of Labor. He added that "the company does

not forget so easily", and advised those discharged to look for work elsewhere. Knaus denied that anything was said about the union during this conversation.

With the exception of Lechner, all the men named in the complaint were discharged in November and December, 1934, and in February, 1935. In November, there were 260 employees, in December, 267, in January, 1935, 250, and in February, 1935, 259. This does not support respondent's contention that some of the men were laid off because of slackness of business. Similarly, when we consider employment during the period in which it is alleged that the respondent engaged in the unfair labor practices charged in the complaint, and the period immediately following, we find that in July, 1935, there were 244 employees, in August, 253, in September, 250, in October, 257, and in November, 253. If the respondent is correct in its contention that some of the men were laid off because of lack of work, why were they not called back to employment when the respondent was increasing its force?

Furthermore, the employment figures furnished by the respondent reveal that during and subsequent to the period when the respondent refused to reinstate the men there was an increase in the number of employees in each of the respective departments in which they were employed before their discharge. Thus the records of the stock cutting department where Harrington had been employed, and to which he was refused reinstatement on or about July 9, 1935, show the following:

1935	Wood roughing machines—Men working	Wood finishing machines—Men working	Total—Men working	1935	Wood roughing machines—Men working	Wood finishing machines—Men working	Total—Men working
<i>July</i>				<i>July—Continued</i>			
Friday, 5.....	7	4	11	Saturday, 20.....	1	0	1
Saturday, 6.....	6	2	8	Monday, 22.....	29	14	43
Monday, 8.....	1	2	3	Tuesday, 23.....	29	14	43
Tuesday, 9.....	1	2	3	Wednesday, 24.....	30	14	44
Wednesday, 10.....	1	2	3	Thursday, 25.....	29	14	43
Thursday, 11.....	1	0	1	Friday, 26.....	29	14	43
Friday, 12.....	1	0	1	Saturday, 27.....	1	0	1
Saturday 13.....	1	0	1	Monday, 29.....	29	14	43
Monday, 15.....	27	14	41	Tuesday, 30.....	29	13	42
Tuesday, 16.....	27	15	42	Wednesday, 31.....	29	14	43
Wednesday, 17.....	27	15	42	August.....	31	16	47
Thursday 18.....	29	15	44	September.....	32	16	48
Friday 19.....	29	15	44	October.....	32	16	48

The cabinet department where Corbin was employed and the varnish and lacquer department where Schmutz, Snyder, John Brooks and George Brooks were employed show this record:¹

¹ The respondent refused to reinstate any of these men on or about August 19, 1935.

1935	Hardwood casket cabinet department—Men working	Hardwood casket var- nish and lacquer department— Men work- ing	1935	Hardwood casket cabinet department—Men working	Hardwood casket var- nish and lacquer department— Men work- ing
<i>August</i>			<i>August—Continued</i>		
Thursday, 1.....	1 29	2 46	Monday, 19.....	35	46
Friday, 2.....	29	46	Tuesday, 20.....	35	46
Saturday, 3.....	1	2	Wednesday, 21.....	35	46
Monday, 4.....	29	45	Thursday, 22.....	35	47
Tuesday, 5.....	29	46	Friday, 23.....	34	47
Wednesday, 6.....	30	45	Saturday, 24.....	5	2
Thursday, 7.....	30	45	Monday, 26.....	35	47
Friday, 8.....	30	45	Tuesday, 27.....	35	46
Saturday, 9.....	1	2	Wednesday, 28.....	35	48
Monday, 10.....	31	46	Thursday, 29.....	35	48
Tuesday, 11.....	31	46	Friday, 30.....	35	48
Wednesday, 12.....	32	46	Saturday, 31 ²	30	31
Thursday, 13.....	30	45	September.....	36	48
Friday, 14.....	31	45	October.....	38	4 51
Saturday, 15.....	1	2			

¹ One (1) foreman included throughout list

² Two (2) foremen included throughout list

³ These men worked this Saturday, when the factory usually is idle, and did not work the following Monday, which was Labor Day

⁴ On October 31 six men were added to the force in this department and worked that day. They were not included in the total of 51

NOTE.—Force in Varnish and Lacquer Department includes three truckers²

²Rudolph Lechner, the chief trucker, was discharged on July 15, 1935, it is therefore immaterial whether there was a vacancy for him at the time he was refused reinstatement by the respondent.

Even a cursory examination of the following table reveals that after the discharged men had been refused reinstatement, men were being hired by the respondent to do the same work previously done by them:

Men hired after August 19, 1935.¹ This information obtained from company's card index of wage rates

Name	Date hired	Payroll no	Assignment
Clinton Root ²	7-17-35	213	Inspector, Fin. Dept.
Hubert Boyles.....	7-24-35	84	Mill.
William Flanagan.....	7-24-35	83	Mill.
Edward James.....	7-31-35	193	Spray helper, Finish Dept.
Theodore J Banowitz.....	8-2-35	133	Cabinet maker.
Donald W Griesmyer.....	8-12-35	105	Yard
J Leo Hess.....	8-12-35	67	
Anthony Fuzzari ²	8-14-35	144	Cabinet Dept.
Gerald M Cole.....	8-19-35	127	Cabinet maker
Michael Graszler.....	8-19-35	62	Trucker, Varnish Dept.
Raymond F Miller.....	8-20-35	167	Cabinet maker
Laurence Khne.....	8-22-35	151	Wood operator, Mill
Cornelius Crowe.....	8-27-35	184	Spray helper, Varnish Dept.
Frank Brewster ²	9-3-35	133	Cabinet maker
John Gontarz.....	9-12-35	146	Cabinet Dept.
Ronald Dean.....	9-17-35	4	Yard
Wellington Fawcett ²	9-26-35	225	Trucker, Varnish Dept.
Joseph Fura ²	9-26-35	23	Yard.
Earl Matraw.....	10-1-35	220	Trucker, Finish Dept.
Harry Saltman.....	10-4-35	232	Helper, Hardwood
Fritz Kraemer.....	10-7-35	191	Stainer, Varnish Dept
Victor Walzak.....	10-7-35	145	Cabinet maker.
Forest Greenlund.....	11-9-35	81	Mill.
Leland F Mason.....	12-18-35	227	Trucker, Varnish Dept
Hugh W Jones.....	1-7-36	293	Shipping Dept.
Carl Heuvel.....	1-9-36	282	Carving
George Allen.....	1-10-36	56	Mill
Myron Johnson.....	1-10-36	16	Yard
Barney Walzak.....	1-20-36	165	Cabinet maker.
Harold Lander.....	1-21-36	162	Yard.
Tony Malone.....	1-21-36	17	Yard
Vinant Rogers.....	1-22-36	18	Yard
Sidney W Warren.....	1-29-36	280	Cabinet maker
Paul Schader.....	3-10-36	47	Mill

¹ Including some hired shortly before August 19th

² Former employees.

It is obvious from the respondent's own employment records that the failure to reinstate the complainants could not be due to a lack of jobs for them.

The Board is of the opinion, from the evidence adduced, that in discharging Rudolph Lechner on July 15, 1935, in refusing employment to Harrington on July 9, 1935, and in denying reinstatement to all of the employees named in the complaint, the respondent discriminated against its employees in regard to hire and tenure of employment, thereby discouraging membership in a labor organization, and interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

To this conclusion, two objections are urged in behalf of the respondent, aside from the arguments on constitutional grounds: (1) No notice was given to the respondent of the existence of the union and the identity of its membership; (2) the discharge or layoff in each case was based upon sufficient grounds which had no connection with union activities.

There was no claim that notice of the existence of the union was given to the respondent. However, the record is replete with evidence which shows not only a knowledge on the part of the management of the existence of the union and the identity of its leadership, but also an active hostility on its part to unionization of the plant.

Notices of meetings of the union appeared in the local newspapers. Members of the shop committee consisting of Leo Schmutz, John Brooks, Clarence Snyder and Rudolph Lechner had met with Mr. Knaus in December, 1934 relative to the reinstatement of John Brooks; Schmutz testified that on that occasion Knaus said that "if he had to let the men run the place he might just as well close the factory", and warned that the respondent was contemplating moving the Oneida plant to New Jersey, adding, "If we close it, I will have a job managing that plant but you fellows won't have a job."

In 1934, Harrington told his foreman, Charles Rooney, that he had been appointed on a committee to meet with the management. He also told Rooney that the employees of the plant were organized. Harrington testified that Rooney made no reply.

Fred W. Corbin testified that in April, 1934, his foreman, Steve Burley, called him into Knaus' office and that Knaus told him that he felt that Corbin was dissatisfied. Knaus tried to dissuade Corbin from joining the union, saying that union organizers were smoking expensive cigars on the workmen's money, and that if the employees made "unnecessary demands", the respondent would shut down the plant and move the factory to another city. Knaus then warned Corbin that he had men advising him of everything that happened. Knaus denied this conversation.

Corbin further testified that on one occasion when he happened to mention the subject of organization to Mr. Nellis, a foreman, in the presence of other workmen, Nellis warned him, "For Christ's sake, don't mention that word again in this shop because if the boss hears you mention that word you will be fired right on the spot and I am instructed to look out for that."

Snyder testified that while he was at work one day in May, 1934, a foreman, Mr. Schwartz, told him that he had just seen his name on the list of agitators on Mr. Knaus' desk. Mr. Schwartz denied this conversation.

From these instances it is apparent that the management of the respondent was well informed of the existence of a union and of the identity of its leadership.

Since the evidence is indisputable that after July 5, 1935, the respondent knew of the existence of a union and the union activities of the employees named in the complaint, it is not indispensable to the case against the respondent to show that the respondent possessed such knowledge at the time of the original discharges. Knaus himself admitted that he came to know of the existence of the union and the connection of the discharged employees with it during the time of the hearing in Buffalo on the old complaint in January, 1935.

That the management was not indifferent to the question of unionism in the plant, as Knaus attempted to make out in his testimony, is shown by the circulation among the employees of a letter dated February 28, 1934, from the president of the respondent, advising the employees to read a small booklet which accompanied the letter. The booklet, called "Labor and Management", recommended by the president, extolled the virtues of the open shop and company unions and denounced labor unions as inimical to American ideals and the self-interest of the workers.

The respondent assigns various reasons in each case for the discharge or layoff of the employees, which the respondent claims to be the real reasons motivating the respondent's action in each case, and which have nothing to do with the union activities of the employees. However, in view of all the circumstances in the case, these reasons lack persuasiveness.

Clarence D. Snyder, a charter member and trustee of the union who helped to organize it, had worked for the respondent as a brush varnisher for 14 years. In the fall of 1934 the respondent substituted spraying for application of varnish by brush. The management promised to give Snyder an opportunity to do spraying, but discharged him on November 16, 1934, without having done so, although it does not appear that the spraying process was of such a technical

nature that he could not have learned it quite as easily as a new man.

George Brooks was active in the organization of the union and the solicitation of members. He had been in the employ of the respondent for 31 years. He worked in the finishing department and operated that department on a contract basis. On December 5, 1934, when the respondent substituted direct employment in the finishing department for the contract method of payment, Knaus notified Brooks by letter that he was laid off.

Brooks was the highest paid man in his department. Upon being discharged, he offered to accept a lesser amount, or one equal to that of the rest of the men in the department. Knaus refused his offer on the ground that his continuing to work for lower wages would make him a discontented worker. On June 12, 1935, the respondent notified Brooks that his name was being stricken from the group insurance roll.

Fred W. Corbin, a charter member and treasurer of the union, had been in the employ of the respondent for three years as a cabinet maker. He was one of the highest paid and most expert men in his department. In December, 1934, a very short time before he was laid off, he was promoted to the job of inspector, and his place was taken by another workman. A short time thereafter, the inspection section of the cabinet department was abolished, and by letter dated December 14, Knaus notified Corbin that he was laid off until further notice. He was not given a chance to resume his work in the cabinet department. On June 12, 1935 he was also advised that his name was being discontinued on the group insurance roll of the respondent. It is a strange coincidence that the department to which Corbin was promoted was abolished a short time after his transfer.

John R. Brooks was discharged on December 21, 1934. He was active in the organization of the union and was elected its vice-president in May, 1934, at the time of its organization. He was later elected president. He was a member of the shop committee constituted in November, 1934, and which met in December, 1934 with Mr. Knaus relative to the reinstatement of Snyder and himself. He worked for the respondent for seven years, and was regularly employed, except for an occasional half-day or day's vacation and the annual shutdown period of two weeks in June of each year. At the time of his discharge he was a trucker, but for some time he had been employed in the finishing department as a rubber. On December 21, 1934, he was given a letter stating that due to the dropping off of orders he was being laid off until further notice. Three truckers remained in the trucking department, all of whom had been employed by the respondent for a shorter period of time than Brooks had been.

It was testified in behalf of the respondent that Brooks was laid off because he was neither a good rubber nor a good trucker. The respondent also contended that its policy was to promote workers from the trucking department to other jobs, but that Brooks was 54 years old and incapable of being advanced.

Anson Harrington was discharged on December 21, 1934. He was active in organizing the union and solicited members for it. He has been employed by the respondent for 17 years, and had been a stock cutter for a number of years. No complaint was found with his work. A foreman of the respondent testified that Harrington was discharged because he was earning a very high rate of pay in his department, was not versatile, and it was necessary to cut down the number of men in the department. The charge of lack of versatility is of too tenuous and vague a nature to merit discussion. Although he was physically disabled by the loss of his right leg below the knee, this impairment had occurred at the age of 11 and he had always been able to do a full day's work. His work is now being done by the man who had previously been his helper.

Leo F. Schmutz was discharged on February 22, 1935. He had been elected president of the union upon its organization and was active in the solicitation of members among the employees. He had been employed intermittently by the respondent for 15 years, and was in the finishing department, where he did touching up work.

The reason assigned for his discharge was that he had sold lottery tickets among the employees. However, he had been engaged in selling lottery tickets for only a few weeks before he was discharged and only to help out another employee, who for some reason was unable to sell tickets himself. Some time before his discharge he had told Mr. Knaus of his good fortune in winning \$1,000. in the lottery, whereupon Mr. Knaus had congratulated him upon his good luck. Other employees were also engaged in selling lottery tickets, but were not discharged. Furthermore, Schmutz did not sell lottery tickets during working hours, and at no time was he, or the employees as a body, warned not to sell tickets. The desire of the respondent's management to protect its employees from being exploited by lotteries would have been equally served if Schmutz had been given a warning before he was discharged. Instead, even though he knew that Schmutz had sold lottery tickets, Knaus attempted to get from Schmutz an affidavit that the latter had never done so, in return for a promise to reemploy him. It is difficult to see what advantage such an affidavit would have had over a forthright promise by Schmutz to refrain in the future from engaging in this practice.

If each case stood alone the reasons assigned for the layoff or dismissal might have a certain plausibility, but the Board finds it difficult to believe that, by sheer coincidence, the officers of the union, the shop committee and those active in the organization of the union and the solicitation of union members were all discharged within a short period and were thereafter refused reemployment, while two other employees who had been discharged and had made complaints to the old Board but who had failed to testify against the respondent, were subsequently reemployed.

Any explanation therefore of the occurrences in this case which does not take into consideration the active hostility of the respondent to the unionization of its Oneida plant, leaves too much to chance and too little to design.

The evidence reveals a definite conflict between the parties in the case as to what occurred on many occasions. Such conflict is common in every type of litigation. The argument of the respondent that the discharged men had a powerful incentive to tell the best story they could in order to make out a case of discrimination applies equally to the witnesses for the respondent. In spite of the element of self-interest, the men did not testify that they gave notice of the existence of the union to the management of the respondent, although they must have realized that that would be a strong factor in their favor. Schmutz' refusal to make an affidavit that he had not sold lottery tickets is another instance of the restraint and candidness which characterized the testimony of the complainants.

This, however, cannot be said of the attitude of the witnesses for the respondent, especially that of Knaus. He repeatedly asserted that until testimony was introduced in this case he had had no inkling whatever of the existence of the union. However, on cross-examination, he had to admit, though reluctantly, that he knew of its existence at least since January, 1935, the time of the first hearing before the Buffalo Regional Labor Board.

CONCLUSIONS OF LAW

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

(1) Casket Makers Union 19559 is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

(2) The respondent, by discriminating in regard to the hire and tenure of employment of Rudolph Lechner, Anson Harrington, Clarence D. Snyder, George W. Brooks, Fred W. Corbin, John R. Brooks and Leo F. Schmutz, and each of them, and thereby discouraging membership in the labor organization known as Casket Makers

Union 19559, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

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

(4) 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, National Casket Company, Inc., and its officers and agents shall:

(1) Cease and desist

(a) from discouraging membership in Casket Makers Union 19559 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;

(b) from in any other 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;

(2) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Rudolph Lechner, Anson Harrington, Clarence D. Snyder, George W. Brooks, Fred W. Corbin, John R. Brooks and Leo F. Schmutz, and each of them, immediate and full reinstatement, respectively, to their former positions without prejudice to the rights and privileges previously enjoyed;

(b) Make whole said Rudolph Lechner for any loss of pay he had suffered by reason of the severance of his employment by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from the date of the severance of his employment to the date of such offer of reinstatement, computed at the wage rate he was paid at the time of such severance, less any amount, if any, which he had earned subsequent to such severance until the date of such offer of reinstatement;

(c) Make whole the said Anson Harrington for any loss of pay he had suffered by reason of the failure of the respondent to rein-

state him on July 9, 1935 or thereafter, by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from the date after July 9, 1935 on which any other person was hired to do work formerly done by him, to the date of such offer of reinstatement, computed at the wage rate paid to such other person, less the amount, if any, which he earned during such period;

(d) Make whole said Clarence D. Snyder, George W. Brooks, Fred W. Corbin, John R. Brooks and Leo F. Schmutz, and each of them, for any losses of pay they have suffered by reason of the refusal of the respondent to reinstate them on August 19, 1935 or thereafter, 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 date after August 19, 1935 on which other persons were hired to do the work formerly done by each of them, respectively, to the date of such offer of reinstatement, computed at the wage rate each was paid at the time each was discharged from employment by the respondent, less the amounts, if any, earned by each, respectively, during such period;

(e) Post notices immediately in conspicuous places in the Oneida plant, stating (1) that it will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.