

In the Matter of NATIONAL NEW YORK PACKING & SHIPPING COMPANY, INC. and LADIES APPAREL SHIPPING CLERKS UNION, LOCAL No. 19953

*Case No. C-83.—Decided June 29, 1936*

*Freight Forwarding Industry—Interference, Restraint or Coercion:* denial of right of employees to be represented by non-employees; interference with organizational activity; questioning employees regarding union affiliation; expressed opposition to labor organization, threats of retaliatory action—*Discrimination:* demotion, wage reduction; discharge—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. David A. Moscovitz* for the Board.

*Mr. Samuel J. Rosensohn*, of New York City, for respondent.

*Mary Lemon Schleifer*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On October 21, 1935, Ladies Apparel Shipping Clerks Union, Local No. 19953, hereinafter referred to as the Union, filed a charge with the Regional Director for the Second Region, alleging that National New York Packing & Shipping Company, Inc., New York, New York, hereinafter referred to as the respondent, had engaged in and was engaging in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On January 29, 1936, the Union filed an amended charge.<sup>1</sup>

As agent for the National Labor Relations Board, the Regional Director issued a complaint against the respondent on February 17, 1936. The complaint alleged that the respondent discharged Irving Goldberg on or about September 23, 1935, and discharged Paul Goldblatt, Alex Bernstein, Morris Fleissig, Victor Fleisher, Hazel Darby, and Ethel Greenglass on or about October 11, 1935, and that such discharges constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. The complaint and

<sup>1</sup> The amended charge added one additional person alleged to have been discriminated against.

accompanying notice of hearing were duly served upon the respondent and upon the Union.

The respondent filed an answer to the complaint, alleging that the Act is unconstitutional in that the authority to enact such a law is not within the powers delegated to the Federal Government and in that the Act violates due process; denying that the respondent is engaged in interstate commerce or that the acts alleged affect commerce; and denying that the alleged discharges were discriminatory, but alleging on the contrary that the discharges occurred because of acts of insubordination committed by the persons discharged.

Pursuant to the notice, a hearing was held on March 17 and 18, 1936 in New York City before Herman A. Gray, duly designated by the Board as Trial Examiner. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded both parties. At the hearing, counsel for the respondent moved to dismiss on the ground that the Act is unconstitutional. The Trial Examiner denied the motion. Counsel for the respondent also made motions to dismiss on the grounds of the inapplicability of the Act to the respondent's business and for failure of the Board to sustain the allegations of the complaint. Decisions on these motions were reserved by the Trial Examiner at the hearing.

On April 4, 1936 the Trial Examiner filed an intermediate report in which he denied the motions on which decision had been reserved. His rulings on all motions are hereby affirmed. The Trial Examiner also found that the respondent had violated the Act in the manner alleged. He recommended the reinstatement of the above named individuals,<sup>2</sup> with back pay.

Counsel for the respondent was permitted to make an oral argument at the close of the hearing and also filed a written brief with the Board on April 7, 1936. The respondent also filed exceptions to the intermediate report on April 21, 1936.

Upon the entire record, including the pleadings, transcript of the hearing, brief filed by the respondent, and the intermediate report, the Board makes the following:

#### FINDINGS OF FACT

1. The respondent is and has been since 1919 a corporation existing under and by virtue of the laws of the State of New York, having places of business at 327 and 363 West 36th Street, New York City.

The business of the respondent consists of receiving packages from vendors in New York City, which are to be delivered to vendees—

---

<sup>2</sup> The complaint was duly amended at the hearing by striking the names of Hazel Darby and Victor Fleisher. These persons are not included in the recommendation.

principally merchants—outside New York City, consolidating such packages into larger packages so that they may be shipped under bulk rates, and delivering the packages so consolidated to carriers for transportation to the vendees.

The services of the respondent are engaged by the vendee who directs the vendor to wrap and deliver the merchandise to the respondent. The respondent receives the packages from the vendor and issues a receipt therefor. The respondent then weighs and sorts the packages, ties them together into bundles, substitutes its own name as shipper by attaching a tag to the consolidated bundle, and delivers the bundle to a carrier. The respondent makes all arrangements with the carrier in regard to manner, time and mode of shipment. The respondent is paid for its services by the vendee, who also pays the charges of the carrier and any additional expense incurred by the respondent in delivering the goods to the carrier.

2. Packages are shipped by the respondent by all means of transportation available out of New York City, including railroads, express, motor carriers and ships. All express and practically all motor carrier shipments are picked up by the carriers at the respondent's door. Andrew W. Loebel, president and active manager of the respondent, testified that deliveries to steamships are made by trucking companies hired by the respondent, the charges for such deliveries being paid for initially by the respondent but subsequently refunded by the vendee. The record does not show how packages sent by freight are delivered to the carriers.

3. Practically all packages received by the respondent are received from New York City. Loebel testified that one-tenth of one per cent of the packages were received from outside the State of New York. The destination of 90% of the packages handled by the respondent is outside the State of New York and includes such distant points as Canada, Newfoundland and South Africa.

4. The business of the respondent is unique, such businesses existing only in New York City. Until about eight years ago the respondent was the only company carrying on such a business. Within the last eight years, competitors have entered the field, only four of them having any importance at the present time. The respondent's business is much larger than that of any of its competitors.

The essence of the respondent's business is speed, all work being geared to meet carriers' schedules. Speed of handling is essential because the savings made in transportation costs would otherwise be negated by the loss occasioned to merchants by late deliveries. For this reason packages are rushed through the respondent's offices and started on their way as rapidly as possible during the same day they are received. Packages are very rarely held in the office overnight.

The respondent serves approximately 2,600 customers. In 1935 it handled 3,400,000 packages, an average of over 10,000 packages each working day. The average weight of packages received by the respondent in 1934 was 10.7 lbs. The respondent's payroll in 1935 was approximately \$100,000. At the time of the hearing the respondent employed approximately 147 persons.

5. The business of the respondent is secured by personal or written solicitation of persons who are making constant purchases from manufacturers, jobbers or wholesalers in New York City and who purchase sufficient quantities of merchandise to justify using the service offered by the respondent. From time to time Loebel and his two associates travel throughout the country for the purpose of soliciting business.

6. It is apparent that the respondent acts not only as a broker or freight agent in arranging transportation for goods in interstate commerce and to foreign countries, but also that the respondent is directly engaged in operations which take place within the very current of commerce. We find that the respondent is engaged in traffic, commerce, and transportation among the several States, and between the State of New York and foreign countries.

7. No organization of the respondent's employees existed prior to August, 1935. On August 26, 1935 a group of employees formed a nucleus of persons in favor of organization and a committee, herein-after referred to as the first committee, was elected to deal with the management.

The drive for organization began because of dissatisfaction among the respondent's employees as to wages and working conditions. On August 29 the respondent's employees called a strike and immediately joined Local No. 19953, a labor organization which is a local of Ladies Apparel Shipping Clerks Union, affiliated with the American Federation of Labor. Membership in Local No. 19953 is not confined to persons employed by the respondent. At the time the strike was called, all of the respondent's employees seem to have joined the Union; at any rate, all of them, except the office force and the supervisory employees, joined in the strike.

The first committee, together with a representative of the Union, attempted to meet with the management of the respondent during the strike in order to secure an agreement. Loebel refused to meet any committee which had as a member a person not an employee of the respondent. Subsequently, the committee, without the representative of the Union, met with Loebel, and the latter made certain proposals which the committee indicated would be acceptable. The employees themselves, however, refused to accept the terms offered and Loebel expressed doubt as to the authority of the committee to

represent all of the respondent's employees. The employees thereupon elected another committee, hereinafter referred to as the second committee, which attempted to bargain with Loebel with the aid of another representative of the Union. Again Loebel refused to meet with the committee so long as it included a member not an employee of the respondent. The second committee, without the Union representative, subsequently met with Loebel and agreed upon terms acceptable to both the committee and the employees, and the strikers returned to work.

The record is not entirely clear as to what concessions were granted as the result of the strike. Some wage increases were given but there was testimony on the part of several Union members that Loebel not only refused to deal with the Union as such but stated that if the men wanted to belong to a union they need not come back to work. This is denied by Loebel, but the entire record convinces us that not only the management of the respondent but also the Union members themselves felt that the strike had been ineffective so far as recognition was concerned.

At the time of the meeting with the second committee, Loebel had again questioned the authority of the committee to represent all the employees. On September 23, 1935, about ten days after the employees returned to work following the strike, Loebel called a meeting of all employees and stated that he wished to see a committee elected which would be representative of all employees. This meeting was attended by all the officers, clerical and supervisory employees as well as all other employees. An election by secret ballot was held at this meeting for the election of a committee, hereinafter referred to as the third committee. There is evidence in the record that the officers, supervisory and clerical employees participated in the discussion, that some of them helped to conduct the election, and that several officers and supervisory officials of the respondent voted.

The first and only meeting of the third committee with the management occurred on October 10, 1935, specific grievances being presented. According to the testimony of a member of that committee, Loebel agreed to remedy the grievances. Loebel denies this, and testified that he only agreed to consider the proposals. In either event, the discharge two days later of several Union members, discussed hereafter, seems to have effectively discouraged both the Union and the committee, for no further attempts to bargain collectively had been made up to the time of the hearing.

8. Irving Goldberg was discharged at the meeting called by Loebel on September 23. Loebel stated at the meeting that he preferred that any committee elected be composed of a small number, preferably no more than eight, because of the difficulty of dealing with a

large committee. He also urged that employees who knew most about conditions be chosen committeemen. Goldberg addressed the meeting and urged that a large, strong, independent committee be elected and alleged that the reason Loebel had suggested the smaller committee was because a smaller committee could be dominated more easily. Later in the meeting Goldberg asked that before the ballots be distributed the number of workers be counted so that it would be impossible to stuff the ballot box. Eisman, secretary and treasurer of the respondent, immediately discharged Goldberg. Loebel then asked Goldberg to leave the building and told the remaining employees that if they wished they could go with Goldberg.

Goldberg had worked for the respondent since February 5, 1935. He joined the Union on August 29, 1935 and was a member of the second committee. No charge of inefficiency has been made against him; the respondent relies entirely upon the argument that Goldberg's conduct at the meeting on September 23 amounted to insubordination and justified his discharge. There are two fallacies in the respondent's argument. It is not apparent from the record that any insult to the respondent's officers was intended nor that such an interpretation of Goldberg's remarks could reasonably be made. In addition, the selection of a committee to deal with the respondent is an organizational activity in the exercise of which employees are by the Act itself protected from interference and domination by employers. It is obvious that Loebel had determined that, if possible, he would break his employees' affiliation with the Union and, if necessary, have it replaced by an inside organization; his presence and that of other supervisory officers at the meeting on September 23 could only have been for this purpose. This was a clear violation of the Act. Goldberg's statements expressed just resentment of this situation; he was exercising the rights granted by the Act. Since the meeting was for the purpose of self-organization the respondent had no right to demand complete obedience and subordination.

We find that Irving Goldberg was discharged because of his union membership and activities.

9. Paul Goldblatt began working for the respondent in 1930. He joined the Union on August 29, 1935, and was one of its organizers. He was a member of the first, second and third committees.

Prior to the strike, Goldblatt and Morganstern, a foreman or manager of the respondent, had been very good friends. After the strike there was a noticeable change on the part of Morganstern. Morganstern questioned Goldblatt frequently about his union membership. Goldblatt testified that because he was fearful of being discharged, he denied he was a member of the Union. On one occasion, Morganstern told Goldblatt, "If I thought you were a member of the Union, I would throw you the hell out of here." On

October 10, after the third committee returned from presenting their grievances to Loebel, another employee came up to speak to Goldblatt. Morganstern told Goldblatt that if he wanted to talk to employees to check out and go home. The evidence shows it was customary for employees to talk to each other while at work if they were not too busy.

Goldblatt was employed in preparing packages for shipment. Two employees usually employed at this work did not report on October 11, and additional effort on the part of those working was required to have the packages ready at the scheduled time. Goldblatt was helping load a truck. Kof, another employee, was also carrying packages to the truck when Cechino, an employee in charge of receiving packages, ordered Kof to take care of some incoming packages. Goldblatt resented the delay which would be caused by this, and attempted to prevent Kof from leaving. Morganstern came into the room, asked what the difficulty was, told Goldblatt that Cechino had more authority than Goldblatt had, and that Kof should follow Cechino's orders. Goldblatt complained because his work would be delayed, and told Morganstern that this dispute "— don't concern you." Morganstern told Goldblatt that if he did not like the way he, Morganstern, ran the place, he could quit. Goldblatt replied he could not afford to quit but that Morganstern could fire him; thereupon Morganstern discharged Goldblatt.

The testimony shows that the respondent considered Goldblatt one of the most dependable and efficient employees, and that prior to October 11, the respondent had never had any trouble with him. It is apparent that the respondent's officers and particularly Morganstern, were bitterly resentful of Goldblatt's union activities and that Morganstern had annoyed Goldblatt to an extent that would goad even the most submissive employee to an expression of resentment. Undoubtedly both Morganstern and Cechino knew the conditions under which the employees were laboring on October 11 to maintain the schedule. Further, the record shows that, although Cechino was in charge of receiving, he had no authority in the shipping department. At the time this incident occurred, Kof was employed in shipping and was not under Cechino's supervision. Even if the orders given to Kof by Cechino and Morganstern were not given for the deliberate purpose of irritating Goldblatt, we do not think that Goldblatt's reaction was such an act of insubordination as would necessitate the discharge of an efficient employee of long standing.

We conclude that Goldblatt was not discharged for insubordination but that on the contrary his attitude towards the incident of October 11 was seized upon as a pretext for discharging him because of his union membership and activities.

10. Immediately after the discharge of Goldblatt, all of the employees in the building, except those working under Morganstern and two others, stopped work and collected on the balcony to protest against the dismissal. They solicited the aid of Miss Brodsky, secretary to Loebel, in the belief that she had more authority than Morganstern and could reinstate Goldblatt. Upon her denial that she had such authority, they requested that she communicate with Loebel, who had left the building. She said she could not do so but assured them that if they would return to work, Loebel would discuss the matter with the committee in the morning. On the faith of this assurance, all those who had not already returned to work or whose work had not been finished returned to their work. The following morning, October 12, nine persons, all members of the Union, who had been among those protesting the night before, were told by Morganstern or by Weingarten, another foreman, that they had been discharged. No reason for the discharge was given to some employees; others were told they did not have the best interests of the company at heart. The respondent alleges that these nine persons, among whom are the remaining three persons named in the complaint, were discharged because they did not return to work the night before when ordered to do so and were therefore guilty of insubordination. Leaving aside entirely the question of the right of employees to strike, we still cannot sustain the respondent's claim as to the three remaining employees named in the complaint.

11. The evidence shows that Ethel Greenglass, although told of Goldblatt's discharge, completed her work and had checked out before she joined the protesting employees on the balcony. It is clear therefore that the respondent's reason cannot apply to her.

Ethel Greenglass had worked for the respondent since February 1932. There is no allegation or evidence that she was not an efficient employee. The respondent's antagonism to Ethel Greenglass undoubtedly arose by virtue of the fact that she was active in organizing the Union, was a member of the first and second committees, and had urged employees who were working after Goldblatt's dismissal to cease working and protest against it.

We find that Ethel Greenglass was discharged because of her union membership and activities.

12. Alex Bernstein testified that he stopped his work and joined the protestors on the balcony, but that Shapiro, one of the foremen or managers, ordered him to return to his work, and that he immediately did so, having been on the balcony only one or two minutes. This testimony is corroborated by other Union witnesses but denied by Shapiro. Other witnesses for the respondent impliedly substantiate Bernstein's testimony.

The respondent's antagonism towards Bernstein apparently grew out of causes existing prior to October 11, and had manifested itself in several ways prior to the discharge. Bernstein, who began working for the respondent in 1929, had joined the Union on August 29. During the strike Morganstern threatened to fire Bernstein, if and when he came back to work. Although Bernstein returned to work, he testified that Morganstern and Weingarten consistently prevented him from speaking to other employees and that Morganstern on several occasions accused him of attempting to secure union members during working hours. In addition, Bernstein had never received the wage increase to which he was entitled under the strike settlement and his grievance had been one of those presented to Loebel by the third committee on October 10, two days before the discharge. At that time, Bernstein was earning additional compensation by working on parcel post packages at night. Shortly after Bernstein's request was presented to Loebel by the committee on October 10, Weingarten, apparently as punishment for presenting the grievance, curtly notified Bernstein that he could not work on parcel post packages any longer.

At the time of discharge, Bernstein was told by Weingarten that he was being discharged because he did not have the best interests of the company at heart. A few minutes later Weingarten asked Bernstein: ". . . where did the Union get off to make demands of the National New York Packing Company." On the following day when Weingarten saw Bernstein outside the plant he again began a discussion of the Union.

It is obvious that Bernstein was discharged on October 12, 1935 because of the respondent's objection to his union activities and affiliation.

13. Morris Fleissig, who had been employed by the respondent since August 1931, was one of the organizers of the respondent's employees and was a member of the first, second and third committees. He testified that after the strike he had constant difficulty with Morganstern, that Morganstern would mumble and make faces at him, and would drive handcarts so close to him that he was hit several times. At the committee meeting with Loebel on October 10, Fleissig complained of this persecution by Morganstern and was called a liar by Loebel.

The testimony shows that Fleissig did leave his work the evening of October 11 when Goldblatt was discharged and that he solicited other employees to do likewise; that he remained on the balcony during the entire time of the interview with Miss Brodsky and acted as spokesman for the employees; and that he probably did not go back to work immediately when ordered to do so. However, the actions

of these employees on October 11, in effect constituted a strike because of the discriminatory discharge of Goldblatt. The right of employees to strike is a lawful one recognized by the Act. The discharge of Fleissig cannot therefore be justified on the ground that he had joined his fellow-employees in a strike and did not return to work until a temporary settlement had been reached.

In addition, we are not impressed with the respondent's argument that the discharges on October 12 occurred because of the refusal of the workers to return to work when ordered to do so. As previously shown, the discharges of Miss Greenglass and Bernstein could not have been for that reason. In addition, the number of employees on the balcony who stopped work and remained there until some arrangements were made was variously estimated between eight and 40. All of these employees were not discharged. The discrimination against Fleissig and the others who were discharged is thus apparent.

We find that Morris Fleissig was discharged on October 12, 1935 because of his union affiliation and activities.

14. The respondent by the discharge of Irving Goldberg, Paul Goldblatt, Alex Bernstein, Morris Fleissig, and Ethel Greenglass, and each of them, as above set forth, has discriminated in regard to hire and tenure of employment and thereby discouraged membership in the Union.

15. The respondent by the discharge of Irving Goldberg, Paul Goldblatt, Alex Bernstein, Morris Fleissig, and Ethel Greenglass, and each of them, has interfered with, restrained and coerced 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 and other mutual aid and protection.

16. During the strike which began on August 29, 1935 and lasted two weeks, the respondent made no effort to do business. No packages were received or sent out during this period. Loebel testified that many of the respondent's customers had cancelled their contracts during the strike, that he and his associates had made great efforts to again secure this business but that at the time of the hearing some of these customers had not yet renewed their contracts. Figures submitted by Loebel show that the respondent handled 300,000 packages in September, 1934, but only 114,000 packages in September, 1935. Loebel testified that the difference was caused by the strike in September, 1935.

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

## CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the National Labor Relations Board finds and concludes as a matter of law:

1. Ladies Apparel Shipping Clerks Union, Local #19953, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Irving Goldberg, Paul Goldblatt, Alex Bernstein, Morris Fleissig and Ethel Greenglass, and each of them, and thereby discouraging membership in the Union, 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

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders the respondent, National New York Packing & Shipping Company, Inc., to:

1. Cease and desist:

(a) from discouraging membership in Ladies Apparel Shipping Clerks Union, Local No. 19953, or in any other labor organization of its employees by discrimination in regard to hire and 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 and other mutual aid and protection.

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

(a) Offer to Irving Goldberg, Paul Goldblatt, Alex Bernstein, Morris Fleissig and Ethel Greenglass, and each of them, immediate and full reinstatement in their former positions without prejudice to rights and privileges previously enjoyed;

(b) Make whole Irving Goldberg, Paul Goldblatt, Alex Bernstein, Morris Fleissig and Ethel Greenglass for any loss they may have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each normally would have earned during the period from the date of discharge to the date of the offer of reinstatement, less amounts earned elsewhere during the same period by each of them, respectively, computed on the basis of the figures set forth in Appendix A, attached hereto and made a part hereof;

(c) Post notices in conspicuous places throughout the buildings occupied by it, stating that: (1) the respondent will cease and desist in the manner aforesaid; and (2) such notices will remain posted for a period of thirty (30) consecutive days.

## APPENDIX A

Name	Average weekly wage at time of discharge	Amount earned elsewhere between date of discharge and date of hearing
Irving Goldberg.....	\$6 50	\$505 25
Paul Goldblatt.....	21 00	None
Alex Bernstein.....	12 00	40 00
Morris Fleissig.....	20 00	124 00
Ethel Greenglass.....	7 00	24 00