

In the Matter of JACOB COHEN, LEE M. COHEN, LAWRENCE L. COHEN.
MILTON COHEN, MORTON COHEN and HYMAN COHEN, trading as
S. COHEN & SONS and LOCAL No. 227, INTERNATIONAL LADIES'
GARMENT WORKERS' UNION

Case No. C-98—Decided December 29, 1937

Ladies' Garment Industry—Interference, Restraint or Coercion: anti-union statements; engendering fear of loss of employment for union affiliation; attempts to persuade employees to resign from union; effort to secure disclosure of identity of union members; questioning employees regarding union activities and meetings—*Collective Bargaining:* refusal to negotiate with union as exclusive representative—*Unit Appropriate for Collective Bargaining:* production employees—*Representatives:* proof of choice: membership in union—*Discrimination:* discharge for union activity—*Strike:* provoked by employer's unfair labor practices—*Employee Status:* employees discharged; strikers—*Reinstatement Ordered:* employees discharged; strikers, upon application; preference list ordered—*Discharge Ordered:* employees hired after strike, if necessary to make room for employees reinstated—*Back Pay:* awarded; employees discharged; strikers, from date of denial of application for reinstatement.

Mr. Jacob Blum, for the Board.

Weinberg & Sweeten, by Mr. Harry J. Green and Mr. Zanvyl Kreiger, of Baltimore, Md., for the respondent.

Mr. Warren L. Sharfman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On March 12 and 16, 1936, respectively, Angela Bambace, representing Local No. 227, International Ladies' Garment Workers' Union, herein called Local No. 227, filed a charge and an amended charge with the Regional Director for the Fifth Region (Baltimore, Maryland) alleging that Jacob Cohen, Lee M. Cohen, Lawrence L. Cohen, Milton Cohen, Morton Cohen, and Hyman Cohen, a co-partnership, trading as S. Cohen & Sons, Baltimore, Maryland, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 17, 1936, the Regional Director duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged in substance that

since March 10, 1936, the International Ladies' Garment Workers' Union, herein called the Union, represented, for the purposes of collective bargaining, a majority of the employees in the appropriate unit of respondent's plant, and that on March 11, 1936, the respondent refused to bargain collectively with the representatives of the Union, and has since refused to do so. It further alleged that, on March 12, 1936, respondent discharged, and has since refused to reemploy, Lorraine Mack and Catharine Unger, for the reason that they joined and assisted the Union and engaged in concerted activities with other employees in the plant for the purpose of collective bargaining and other mutual aid and protection. Finally, it alleged that these actions of the respondent constituted unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act.

On March 21, 1937, the respondent filed a special appearance for the purpose of objecting to the jurisdiction of the National Labor Relations Board, herein called the Board, the Regional Director for the Fifth Region, and the Trial Examiner. At the same time the respondent filed an answer, denying all of the allegations of the complaint save that respondent was a co-partnership engaged in the manufacture of ladies' cloaks and suits in Baltimore, Maryland, which was to be considered in the event that an unfavorable ruling was made on the special appearance.

Pursuant to the notice, a hearing was held at Baltimore, Maryland, on March 30, 1936, before Robert M. Gates, the Trial Examiner duly designated by the Board. All of the objections contained in the special appearance were overruled and denied in an order filed by the Trial Examiner at the commencement of the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties. The respondent, appearing by counsel, objected to the introduction of any testimony or evidence, but did not cross-examine the Board's witnesses nor introduce any evidence upon its own behalf. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On May 12, 1936, the Trial Examiner filed an Intermediate Report on the complaint, finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist from these violations, that Catharine Unger and Lorraine Mack be reinstated and given back pay, that all striking employees be reinstated, and that the respondent proceed to bargain collectively with the Union. The respondent excepted to the Trial Examiner's Intermediate Report, and

to each part of it. We have fully considered the exceptions to the Intermediate Report and find no merit in them.

As set forth below, we find that the evidence supports the findings and conclusions made by the Trial Examiner in his Intermediate Report that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, S. Cohen & Sons, is a co-partnership engaged in the manufacture of ladies' cloaks and suits in Baltimore, Maryland. The respondent stated that, on the average, it employs about 100 persons. Testimony at the hearing indicated that at the time of the actions complained of, the respondent employed between 75 and 80 production workers, most of whom were women.

The principal materials used by the respondent are wool, cotton, and silk textile fabrics; fur; thread; buttons; tape; and canvas. Ninety-eight per cent of the materials purchased are shipped to it from points outside Maryland by rail, truck, or boat. The manufactured garments are sold to retail stores in seven states and the District of Columbia by eight salesmen, five of whom are located in Maryland, two in Illinois, and one in Alabama. Seventy per cent of all sales are made outside of Maryland, principally in the South.

II. THE ORGANIZATION INVOLVED

International Ladies' Garment Workers' Union, affiliated with the Committee for Industrial Organization, is a labor organization composed of workers in the ladies' garment industry. On March 10, 1936, it chartered Local No. 227, which admits to membership women employed as operators or finishers in Baltimore. Local No. 227, together with Local No. 4 of the Union, which admits to membership men employed as operators, finishers, and pressers in Baltimore, and Local No. 110 of the Union, which admits to membership cutters employed in Baltimore, constitute the Joint Board of Baltimore.

III. THE UNFAIR LABOR PRACTICES

A. The refusal to bargain collectively

The complaint alleges that the respondent failed and refused on or about March 11, 1936, and thereafter, to bargain collectively with the Union, although prior to March 11 and at all times thereafter, the Union had been designated by a majority of the employees in the appropriate unit to represent them in collective bargaining.

Late in January 1936, Catharine Unger, an operator in respondent's factory, became dissatisfied with her wages and working conditions, and appealed to Angela Bambace, an organizer for the Union, for aid in bettering these conditions. A short time later Lorraine Mack, also an operator in respondent's factory, made a similar request of Miss Bambace on behalf of a group of the girls at the factory. Angela Bambace promised that if the two women could get a group interested she would organize them into a local to bargain with the respondent. On February 25, 1936, through the efforts of Catharine Unger and Lorraine Mack, their group had its first meeting, at which 18 women, employees of the respondent, were present. A second meeting on March 3, 1936, was attended by 42 employees, all of whom signed application blanks and pledged themselves to join the Union. On March 10, 1936, a third meeting was held with approximately 50 employees of the respondent present as members. At this meeting Local No. 227 was formed, a charter prepared, and officers elected. Lorraine Mack was elected chairlady of the S. Cohen & Sons shop.

The following day, March 11, 1936, Charles Kreindler, a vice-president of the International Ladies' Garment Workers' Union, phoned Lee Cohen, in the presence of Miss Bambace, and told him the Union represented a majority of the employees in the respondent's factory, and that he, Angela Bambace, and Samuel Caplan, representatives of the Union, would like to discuss wages and hours with him. Lee Cohen's reply was, "Send me a letter". The same day a letter from Kreindler, stating that he and his associates had been selected as representatives for collective bargaining by the majority of the respondent's employees and requesting a conference, was sent by a Postal Telegraph messenger to Lee Cohen. The letter, which had been opened, was returned by the messenger. Kreindler sent the letter back with the messenger and told him to leave it with Lee Cohen. The messenger reported to Kreindler that he had delivered the letter on the first occasion and that the respondent had given it back to him and said "No reply", and that he had later left the letter with the respondent. The next day, March 12, 1936, Lee Cohen discharged Catharine Unger and Lorraine Mack. On the evening of the same day, a few hours after the discharges, the Union met and voted to go on strike because of the discharges and the respondent's refusal to recognize the Union as the exclusive bargaining agent for its employees. The next morning 68 members of the Union went out on strike, of whom 11 returned to work on March 17, 1936. The remainder were on strike at the time of the hearing. The representatives of the Union made no further requests of Lee Cohen, and have never received a reply to their letter of March 11, 1936. We conclude that the actions of the respondent constituted a refusal on its part to bargain with the Union representatives, provided that

the Union, at the time the respondent did these acts, represented a majority of the employees in an appropriate bargaining unit.

Union membership in the respondent's shop is limited to the production employees, consisting of operators, finishers, pressers, and cutters, exclusive of handymen, office and supervisory employees. Local No. 227 of the Union admits to membership women employed as operators or finishers in Baltimore. Local No. 4 of the Union admits to membership men employed as operators, finishers, or pressers in Baltimore. Local No. 110 of the Union admits to membership persons employed as cutters in Baltimore. The three locals function as a unit through the Joint Board of Baltimore. Charles Kreindler, Samuel Caplan, and Angela Bambace represented all three locals for the purposes of collective bargaining when Kreindler telephoned and wrote to Lee Cohen on March 11, 1936. It is apparent that the production employees, in addition to being a unified group functionally, are also unified for the purposes of collective bargaining even though they belong to different locals of the Union.

The production employees, consisting of operators, finishers, pressers, and cutters, exclusive of handymen, office and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and such a unit insures to the respondent's employees the full benefit of their right to self-organization and collective bargaining, and otherwise effectuates the policies of the Act.

The complaint alleged that at the time of the respondent's refusal to bargain collectively, the Union represented a majority of the respondent's employees in the appropriate unit. The testimony of the Board's witnesses indicated that on March 11 respondent employed between 75 and 80 production workers. The respondent's figure of 100 employees is an average figure, rather than a specific figure as to the number employed on March 11, and it includes all employees rather than just those engaged in production. The Board introduced into evidence 68 applications for membership in the Union signed by employees of the respondent prior to March 11, 1936. Each of the three locals affiliated with the Joint Board of Baltimore received some members from this group of applicants, but as each local had the same representatives for the purposes of collective bargaining, the applicants were represented as a unit.

We therefore find that on March 11, 1936, and at all times thereafter, International Ladies' Garment Workers' Union, Joint Board of Baltimore, was the duly designated representative of the majority of the employees in the appropriate unit, and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect

to rates of pay, wages, hours of employment, and other conditions of employment.

We find that on March 11, 1936, and thereafter, the respondent refused to bargain collectively with the duly designated representatives of a majority of its employees in the unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

B. *The discharges*

Catharine Unger, an operator, was employed by respondent early in January 1936. She had worked for respondent during the 1932 season, and elsewhere during the succeeding seasons. Shortly before her reemployment she received several post cards from the respondent asking her to come back, but she did not return until Samuel Cohen, the father of the members of the respondent co-partnership, came to her home, promised her better conditions, and asked her to return.

Although Catharine Unger had been promised better conditions, she found them less bearable as her employment continued. As a result she went to the Union for aid, and Local No. 227 was organized in the manner described in Section III A, above.

On March 3, 1936, Catharine Unger signed an application for membership in the Union. On March 12, the day after the Union attempted to negotiate with the respondent, Lee Cohen came to her and told her to get her hat and coat and come to the office. When she went to the office he handed her her pay envelope. The only reply he gave to her question as to why she was discharged was, "We can't use you any more." He insisted upon her leaving immediately, following her into a public dressing room, and threatened to call the police if she did not go. He refused to let her use the elevator in descending from the eighth floor, and before she left attempted to take her personal work book from her. Mrs. Unger obtained no work from the date of her discharge to the date of the hearing. Her average earnings up to the time of her discharge were \$13.00 per week.

Lorraine Mack, an operator, was employed by the respondent for a period of four or five years prior to the present difficulty. Although she earned around \$45.00 a week while N. R. A. was in force, she was only receiving \$21.00 or \$22.00 a week during the first two months of 1936. During slack seasons she was usually the last worker to be laid off. Early in 1936, when wages were reduced and hours lengthened, a number of the employees became restless, and Lorraine Mack went to the Union to seek aid in the improvement of their conditions. Thereafter, Local No. 227 was organized in the

manner set forth in Section III A, above. Lorraine Mack applied for membership in the Union on March 3, and received her card a few days later. On March 10, she was elected chairlady of the respondent's shop. On March 12, a few hours after Catharine Unger had been discharged, Lorraine Mack was called into Lee Cohen's office and discharged. No reason was given for the discharge, Lee Cohen merely said, "I am awfully sorry but I can't use you any more, Mrs. Mack." Mrs. Mack told him he was wrong in thinking he could break up the Union by discharging her. Cohen replied, "All right, see how many of the girls stick with you." Mrs. Mack obtained no work from the date of her discharge to the date of the hearing. During the two weeks prior to her discharge she earned \$27.00 a week.

It was testified at the hearing, and not contradicted by the respondent, that the respondent had discharged employees in the past for union activity, and had taken them back only after intervention by government authorities. The respondent on various occasions prior to these discharges attempted to find who, among its employees, were sympathetic with the Union, and attempted to thwart the employees' efforts to organize. The respondent paid "Willie," one of its employees, to attend the first meeting of Local No. 227 and find out who, among the employees, attended. Mrs. Unger was questioned by Ackerman, the foreman, and Sarubin, the head cutter, as to the nature of the Union meetings. Lee Cohen called Mrs. Mack to his office on February 27, two days after the first Union meeting, and after failing to get any information as to what happened at the meeting, and after stating that he had previously discharged some employees for joining the Union, offered to pay her \$25.00 a week, regardless of her production, but insisted that she stop thinking about "this other matter".

In considering the respondent's motive for the discharges, it should be remembered that the respondent was anxious to obtain and retain the services of Catharine Unger and Lorraine Mack until their interest in the formation of the Union was manifested, and even then the respondent made no complaint as to their work, and offered no reason for their discharge.

We find that the respondent discharged Catharine Unger and Lorraine Mack because of their union activity and thus discriminated against them in regard to the tenure of their employment, thereby discouraging membership in the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to

trade, traffic, and commerce among the several states, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

We will order that Catharine Unger and Lorraine Mack be offered reinstatement to their former positions. They are entitled to back pay from the date of their discharge until the respondent offers to reinstate them, less any amounts earned by them in the meantime.

We have found that the respondent's production workers struck on March 13, 1936, owing to the respondent's refusal to bargain collectively with the representatives of its employees and its discharge of Catharine Unger and Lorraine Mack for union activity. Since the strikers ceased work as a consequence of, and in connection with a current labor dispute, and because of the respondent's unfair labor practices, those strikers who have not obtained any other regular and substantially equivalent employment have been since March 13, 1936, "employees" of the respondent within the meaning of Section 2 (3) of the Act. The respondent is under a duty to reinstate the strikers, upon application, to their former positions and to restore the status quo which existed prior to its commission of the unlawful acts. Therefore, we shall order the respondent to offer to those employees who were on strike as of March 13, 1936, and who have not obtained regular and substantially equivalent employment elsewhere, upon application, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights or privileges; to dismiss, if necessary, such employees as it has hired since the strike; and place those for whom work is not available on a preferred list to be offered employment as it arises on the basis of seniority by classifications before any other persons are hired. Our order will also provide that employees whose applications for reinstatement are refused by the respondent in violation of this order shall be entitled to back pay accruing from the date of the refusal of the application to the date of reinstatement, less any amount earned during that period.¹

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union is a labor organization, within the meaning of Section 2 (5) of the Act.

¹ *Matter of The Boss Manufacturing Company and International Glove Workers' Union of America, Local No. 85, 3 N. L. R. B. 400.*

2. Catharine Unger and Lorraine Mack were at the time of their discharges, and at all times thereafter, employees of the respondent, within the meaning of Section 2 (3) of the Act.

3. The respondent, by discriminating against Catharine Unger and Lorraine Mack in regard to hire and tenure of employment and conditions of employment, thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. 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 (1) of the Act.

5. The strike of the employees was a labor dispute, within the meaning of Section 2 (9) of the Act.

6. Those strikers who have not obtained any other regular and substantially equivalent employment are employees of the respondent, within the meaning of Section 2 (3) of the Act.

7. All the production employees, consisting of operators, finishers, pressers, and cutters, exclusive of handymen, office and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

8. By virtue of Section 9 (a) of the Act, International Ladies' Garment Workers' Union, Joint Board of Baltimore, having been selected as their representative by the majority of employees in the appropriate unit, was on March 11, 1936, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

9. The respondent, by refusing to bargain collectively with the representatives of its employees on March 11, 1936, and thereafter, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Jacob Cohen, Lee M. Cohen, Lawrence L. Cohen, Milton Cohen, Morton Cohen and Hyman Cohen, trading as S. Cohen & Sons, Baltimore, Maryland, and its officers, agents, successors, and assigns shall:

1. Cease and desist from 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 and protection, as guaranteed in Section 7 of the Act.

2. Cease and desist from causing any employee, or other person, to spy upon or investigate the activities of its employees in the course of their efforts to exercise the rights guaranteed in Section 7 of the Act.

3. Cease and desist from refusing to bargain collectively with International Ladies' Garment Workers' Union, Joint Board of Baltimore, as the exclusive representative of all its production employees, consisting of operators, finishers, pressers, and cutters, exclusive of handymen, office and supervisory employees.

4. Cease and desist from discouraging membership in International Ladies' Garment Workers' Union, Local No. 227, or any other labor organization of its employees, by discharging and refusing to reinstate employees, or otherwise discriminating in regard to hire and tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

a. Offer to Catharine Unger and Lorraine Mack immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority, or other rights or privileges;

b. Upon application, offer to those employees who were on strike as of March 13, 1936, and who have not obtained regular and substantially equivalent employment elsewhere, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges; dismiss, if necessary, such employees as it has hired since the strike; and place those for whom employment is not available on a preferred list to be offered employment as it arises on the basis of seniority by classifications before any other persons are hired;

c. Make whole Catharine Unger and Lorraine Mack for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each of them, respectively, would normally have earned as wages from the date of her discharge to the date of the offer of reinstatement pursuant to this order, less any amount earned by each of them, respectively, during such period;

d. Make whole all employees who were on strike on March 13, 1936, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 5 b herein, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during

the period from the date of any such refusal of their application to the date of offer of reinstatement, less any amount earned by each of them, respectively, during such period;

e. Upon request, bargain collectively with International Ladies' Garment Workers' Union, Joint Board of Baltimore, as the exclusive representative of all its production employees, consisting of operators, finishers, pressers, and cutters, exclusive of handymen, office and supervisory employees, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

f. Post notices in conspicuous places where they will be observed by the respondent's employees stating: (1) that the respondent will cease and desist in the manner aforesaid; and (2) that said notices will remain posted for a period of thirty (30) consecutive days from the date of posting;

g. Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.