

In the Matter of N. KIAMIE and INTERNATIONAL FUR WORKERS UNION  
OF THE UNITED STATES AND CANADA

*Case No. C-280.—Decided January 10, 1938*

*Hatter's Fur Industry—Unit Appropriate for Collective Bargaining:* production employees—*Representatives:* proof of choice: membership in union; no controversy as to majority representation—*Collective Bargaining:* refusal to recognize and negotiate with union resulting in—*Strike—Reinstatement Ordered:* respondent not engaged in same type of business at time of hearing; reinstatement ordered, if and when, respondent reengages therein.

*Mr. Charles A. Graham*, for the Board.

*Mr. Nahomi Kiamie*, of Newark, N. J., pro se.

*Isserman & Isserman*, by *Mr. Sol D. Kapelsohn*, of Newark, N. J., for the Union.

*Mr. A. Bruce Hunt, Jr.*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On July 16, 1937, International Fur Workers Union of the United States and Canada, herein called the Union, filed a charge with the Regional Director for the Second Region (New York City) against N. Kiamie, individually, doing business under his own name, Newark, New Jersey, herein called the respondent, charging the respondent with violation of Section 8 (1) and (5) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 22, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, issued its complaint against the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, in that on or about June 23, 1937, and at all times thereafter, the respondent had refused to bargain collectively with the Union as the duly authorized representative of the respondent's production employees, said employees constituting an appropriate bargaining unit; had urged and attempted to persuade his employees to withdraw from membership in the Union; and had otherwise interfered with and coerced

his employees in the exercise of their rights as guaranteed in Section 7 of the Act. The complaint and accompanying notice of hearing were duly served upon the respondent and the Union. No answer thereto was filed by the respondent.

After two postponements of the hearing, notices thereof having been duly served upon the parties, and pursuant to a second amended notice of hearing duly served upon the parties, a hearing was held in New York City on October 11, 1937, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board and the Union were represented by counsel, and the respondent appeared in his own behalf. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties. No motions were made during or at the close of the hearing, nor were there objections to any of the evidence offered.

On November 4, 1937, the Trial Examiner duly filed his Intermediate Report. He found that the respondent had engaged in the unfair labor practices alleged in the complaint and recommended that the respondent cease and desist therefrom and that he offer full reinstatement to the discharged employees. No exceptions to the Intermediate Report were filed.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is an individual engaged, under his own name, in the latter's fur business, having his sole plant and office in Newark, New Jersey. At the time of the strike hereinafter referred to, the type of work in which the respondent's employees were engaged was the sorting of scraps of fur according to size and color and the pasting thereof on cards. A stipulation<sup>1</sup> entered into by the Board and the respondent reads in part as follows: "The raw materials used in the manufacture of blow fur are the scraps of rabbit skins purchased from fur dealers in the State of New York which are delivered to the respondent's plant . . . by trucks. The finished product manufactured by N. Kiamie is blow fur which is used in the manufacture of felt hats. N. Kiamie sells and ships all of his finished product to dealers or jobbers located in the States of New York and Connecticut." The raw materials used by the respondent were at times purchased directly by him and at other times by his competitors for him.

<sup>1</sup> Board's Exhibit No. 2.

All of the respondent's production employees<sup>2</sup> were engaged in the same type of work, all working in one room of the plant occupied by the respondent. The number of employees, all of whom were women, varied. Few of them worked regularly. The respondent testified that the largest number ever employed by him was 17 or 18, and that on the day of the strike, and for some months prior thereto, the average daily employment numbered 10. However, one employee testified that "15 or 16" employees were working on the day of the strike.

## II. THE UNION

International Fur Workers Union of the United States and Canada is a labor organization, affiliated with the Committee for Industrial Organization, which admits to membership all production employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. *The refusal to bargain collectively*

#### 1. The appropriate unit

The complaint alleges that all of the respondent's production employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. All such employees are eligible for membership in the Union.

All of these employees were paid at the rate of one cent for each card of fur pasted. They worked as many as 12 hours per day, five or more days per week. The average weekly wage of an employee on this basis was three and a half to five dollars. All of the respondent's production employees were engaged in the same type of work, i. e., the sorting and pasting of scraps of fur; all were remunerated on the same wage basis; all were supervised solely by the respondent and were responsible only to him; and all worked in the same room in the shop.

We find that all the production employees of N. Kiamie 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 unit insures to the employees of N. Kiamie the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuates the policies of the Act.

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<sup>2</sup> The evidence indicates that all of the respondent's employees on June 23, 1937, with the exception of three, were production employees. These three were: (1) the respondent's son, who performed the duties of a bookkeeper; (2) a girl who, on an average of once each week, aided the respondent's son in performing certain bookkeeping details; and (3) a man whose only duty, so far as shown by the record, was to open the plant each week-day morning.

## 2. Representation by the union of a majority in the appropriate unit

On June 23rd, the respondent's production employees went out on strike. One of the employees testified the strike was for higher wages, shorter hours, and a union shop. The respondent testified that he was not informed as to the cause of the strike. On one occasion, at least two weeks after the strike commenced, several employees returned to the plant and worked for a few hours. At this time the respondent offered to reinstate them and the other striking employees, provided, however, that such reinstatement should not involve recognition of the Union by the respondent. This offer of reinstatement was refused. Aside from this instance, none of the employees have worked for the respondent since June 23rd.

Immediately after the strike began, the strikers communicated with the Union. Fifteen application cards for membership in the Union were introduced in evidence. These cards bear the signatures of 15 persons, 14 of whom were definitely identified by the respondent as his employees, 10 of whom, according to the respondent, were working on June 23rd. The respondent's testimony fixes the number of production employees at not more than 18 at any time, but he further testified that the average daily employment on June 23, and for some months prior thereto, was ten. Seven of the cards bear no date, but it was testified by a union member that they were signed in her presence on June 23, 1937; the remainder are dated June 23 or later. Each card designates the Union as the collective bargaining agent of the signer in all matters pertaining to rates of pay, wages, hours of employment, and other conditions of employment.

We find that on June 23, 1937, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit. By virtue of Section 9 (a) of the Act, the Union was, therefore, the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

## 3. The refusal to bargain

On July 1, 1937, a representative of the Union called upon the respondent in an effort to obtain recognition of the Union as the proper bargaining agency for the respondent's production employees and to bargain in their behalf. On this occasion, and at other times, the respondent refused to bargain collectively. The efforts of this representative alone and with members of the Union have been to no avail. Conferences between the respondent and representatives of the Union were arranged, but the respondent failed to attend a part of them and, at those which he did attend, he refused to enter

any discussion designed to effect collective bargaining between himself and his production employees. His position at these times was reiterated in his testimony as a witness at said hearing, namely, that he was willing to bargain individually, but not collectively, with his employees and that he would have no relations or dealings with the Union:

We find that the respondent has refused to bargain collectively with the representative of his employees, and has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### 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

The testimony of the respondent indicates that he may not be in a position to reinstate his production employees at the present time. There are several separate and distinct operations in preparing scrap fur to be used in the manufacture of hats, in only one of which was the respondent engaged on June 23, 1937. After the sorting and pasting of the fur on cards, the fur is cut or scraped from the cards by machinery. This is termed the cutting process. About eight months prior to the hearing in the instant case, the respondent, according to his own testimony, finding the pasting business unprofitable, obtained machines and entered the field of the cutting process. This in turn was found to be unprofitable, and the respondent being financially unable to purchase the pasted cards from someone engaged in the pasting process, returned to the business of pasting. The machines remained idle in his shop. Several weeks after the strike commenced, the respondent borrowed money in order to purchase pasted cards and to place the machines in operation again. It is in the cutting process that the respondent is now engaged. The person from whom the respondent obtained the loan is the respondent's partner in the present venture. The respondent, aided by two men, operates the machines and no other employees are required. Consequently, the respondent asserts he cannot now offer work to any of his production employees. The record does not show

whether these machines can be operated by a woman. We are, therefore, unable to order the respondent to reinstate his production employees.

However, we shall order that, should the respondent again engage in the business of sorting and pasting furs, as on and prior to June 23, 1937, he shall cease and desist from engaging in the unfair labor practices above described, and, the strike having been prolonged by said unfair labor practices, shall, upon application, offer reinstatement to his production employees listed in Appendix A, and shall then bargain collectively, upon request with the representative of his said employees in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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 Fur Workers Union of the United States and Canada is a labor organization within the meaning of Section 2 (5) of the Act.

2. All of the production workers employed by the respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Fur Workers Union of the United States and Canada was on June 23, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with International Fur Workers Union of the United States and Canada as the exclusive representative of his employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. The respondent, by his refusal to bargain collectively as above described, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The afore-mentioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

#### ORDER

On the basis of the above findings and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent,

N. Kiamie, Newark, New Jersey, and his agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with International Fur Workers Union of the United States and Canada as the exclusive representative of the production employees in his employ on and prior to June 23, 1937.

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

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

a. Should the respondent reengage in the business of sorting and pasting furs, upon request bargain collectively with International Fur Workers Union of the United States and Canada as the exclusive representative of the production employees in his employ on and prior to June 23, 1937, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

b. Should the respondent reengage in the business of sorting and pasting furs, to the extent that work is available, offer to his production employees listed in Appendix A, upon application, full reinstatement to their former positions without prejudice to their seniority and other rights and privileges, and place such of them for whom employment is not available on a preferred list to be offered employment as it arises;

c. Make whole all employees named in Appendix A for any loss they may suffer by reason of any refusal of their applications for reinstatement in accordance with paragraph 3b herein, by payment to each of them, respectively, 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 reinstatement, less the amount, if any, which each, respectively, earned during said period;

d. Should the respondent reengage in the business of sorting and pasting furs, immediately post in conspicuous places throughout his plant a notice stating (1) that the respondent will cease and desist in the manner aforesaid and stating (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

e. Should the respondent at any time reengage in the business of sorting and pasting furs, notify the Regional Director for the Sec-

ond Region in writing within ten (10) days from such time what steps the respondent has taken to comply herewith.

*Appendix A*

Elizabeth Chambers

Marie Cicalese

Bertha Johnson

Kate Johnson

Mamie Johnson

Myrtle Konch

Josephine Meiczkowski

Lucy Page

Floean Perry

Mary Romanwicz

Margaret Schuler

Hattie Thomas

Ruth Thomas

Sarah Walsh

Beatrice Williams