

In the Matter of OMAHA HAT CORPORATION and UNITED HATTERS, CAP
AND MILLINERY WORKERS INTERNATIONAL UNION, LOCAL NOS. 7
AND 8

Cases Nos. C-256 and R-279.—Decided January 12, 1938

Men's Hat Industry—Interference, Restraint or Coercion: closing plant and preparing to remove operation to new location—*Discrimination:* discharge—*Unit Appropriate for Collective Bargaining:* production employees—*Representatives:* proof of choice: applications for membership in union—*Collective Bargaining:* meeting with representatives, but with no intention of bargaining in good faith; refusal to negotiate with representatives—*Strike:* provoked by employer's unfair labor practices—*Reinstatement Ordered:* employees discharged; strikers upon application for reinstatement—*Back pay:* awarded employees discharged; strikers, from date of denial of application for reinstatement.

Mr. David A. Moscovitz, for the Board.

Mr. David T. Smith, of New York City, for the respondent.

Mr. David I. Ashe, of New York City, for Local Nos. 7 and 8.

Mr. Robert Burstein, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, herein called the Locals, the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, Regional Director for the Second Region (New York City), issued its complaint dated September 2, 1937, against Omaha Hat Corporation, New York City, herein called the respondent, alleging 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and accompanying notice of hearing were duly served upon the parties.

In respect to the unfair labor practices, the complaint alleged in substance: (1) that the production employees of the respondent, exclusive of supervisory, clerical, and shipping employees, constituted an appropriate unit for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act; (2) that the Locals, on or

about July 5, 1937, had been designated by the majority of the employees in such unit as their representatives for the purposes of collective bargaining, and, at all times thereafter, were the exclusive representatives of all the employees in said unit; (3) that on or about July 12, 1937, and thereafter, the respondent refused to bargain with the Locals as the exclusive representatives of all the employees in such unit; (4) that the respondent has urged, persuaded, and warned its employees against becoming or remaining members of the Locals, has threatened its employees with discharge and other reprisal if they became or remained members thereof, and has kept under surveillance the meetings and meeting places of the members of the Locals; (5) that the respondent, on or about July 13, 1937, discharged David Magzamen¹ and Guiseppi Rivoli² for joining and assisting the Locals; (6) that on or about July 15, 1937, as a result of the respondent's unfair labor practices, the production employees of the respondent, listed in Schedule A attached to the complaint, went out on a strike which has continued up to and including the date of the complaint; (7) that on or about September 2, 1937, said striking employees applied for reinstatement on condition that the respondent agree to bargain collectively with the Locals and desist from the other unfair labor practices, but that the respondent refused and has continued to refuse to reinstate them; and (8) that on or about August 25, 1937, the respondent commenced to move its machinery and operations to New Jersey and has continued to do so up to and including the date of the complaint, in order to discourage membership in the Locals and to discriminate against members of such Locals.

In the course of the hearing, the respondent filed an answer³ to the complaint, denying that it had engaged in the alleged unfair labor practices and asking that the complaint be dismissed.

The Locals also filed a petition, dated July 12, 1937, and an amended petition, dated September 2, 1937, requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 3, 1937, the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On the same day, the Board, acting pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations, ordered that the two cases be consolidated.

Pursuant to notice, a hearing on the complaint and petition was held in New York City on September 8, 10, 13, and 14, 1937, before H. R.

¹ Referred to in the charge and complaint as David Magzawen.

² So spelled in the transcript of the hearing; referred to in the charge and complaint as Guiseppe Rivoli.

³ Board's Exhibit No. 1-A.

Korey, the Trial Examiner duly designated by the Board. The Board, the Locals, and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine, and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties. We have reviewed all the rulings made by the Trial Examiner on motions, objections, and other matters, and find that no prejudicial errors were committed. The rulings are hereby affirmed.

After the hearing the respondent filed a brief, to which we have given due consideration. Subsequently the Trial Examiner filed his Intermediate Report, 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 reinstatement and back pay to David Magzamen and Guiseppi Rivoli. Exceptions to both the rulings and the findings of the Trial Examiner were filed by the respondent. Among other things, the respondent excepted to the admission of certain testimony offered by the Board in rebuttal on the ground that such testimony was not properly rebuttal and was not relevant to the issues; and requested that, if such testimony be held proper and relevant, the case be reopened to afford the respondent an opportunity to offer testimony in answer thereto. The exception is overruled and the request for reopening is hereby denied. We have fully considered the exceptions to the findings of the Intermediate Report and find no merit in them.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Omaha Hat Corporation, is and has been since 1925 a corporation organized and existing under the laws of the State of New York, and until September 3, 1937, had its principal office and place of business in New York City, where it was engaged in the finishing of men's felt hats. On September 3, 1937, the respondent ceased operations in New York City and took steps to transfer its business to Garwood, New Jersey. At the time of the hearing such steps had not yet resulted in the resumption by the respondent of operations in Garwood, New Jersey.

The respondent is a closed corporation. Isidore Ferzig, its president, considers himself the "sole owner", owning or controlling all of its stock.

Prior to the strike of July 15, the respondent employed 70 production employees. It manufactured principally a cheaper grade of men's felt hats, and was reputed to be the largest manufacturer of this type of hat in the vicinity.

The principal materials used by the respondent in its operations were hat bodies, fur, felt, ribbons, bands, lining, and leather. Approximately 75 per cent of these materials came from States other than New York. At least 50 per cent of the finished hats were sold and shipped directly to points outside of the State of New York. All shipments, whether incoming or outgoing, were made by rail or truck.

II. THE LOCALS

United Hatters, Cap and Millinery Workers International Union, herein called the International, affiliated with the American Federation of Labor, is a labor organization which came into existence in October 1936 as a result of the amalgamation of United Hatters of North America and Cloth Hat, Cap and Millinery Workers International Union. Local Nos. 7 and 8 are labor organizations composed of female production employees and male production employees, respectively. The jurisdiction of the Locals extends throughout New York City.

Pursuant to authorization conferred by the International, both Locals act jointly for the purpose of organizing the production employees in various plants in New York City and for the purpose of collective bargaining on behalf of such employees. Although rates of pay for women are negotiated by officers of Local No. 7 and rates of pay for men by officers of Local No. 8, with separate agreements normally being signed, such agreements are executed simultaneously on behalf of the International; and there are no plants where the members of one Local are covered by an agreement and the members of the other Local are not. In the event that a plant organized by the Locals is moved beyond their territorial jurisdiction, the International is authorized to act as the representative of the Locals' members and to designate agents to carry on negotiations.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges that all of the production employees of the respondent, exclusive of supervisory, clerical, and shipping employees, constitute a unit appropriate for the purposes of collective bargaining. The respondent does not assert that any other unit is the proper one. All of the production employees, except supervisory, clerical, and shipping employees, are eligible to membership in the Locals. They fall within the following classifications: Trimmers, operators, finishers, flangers, slickers, packers, whippers-in,

binders, floor boys, and "hydraulickers." The types of work performed by the employees of the various classifications are closely related, one step following another in the ultimate production of the finished hat. Max Finger, secretary-treasurer of Local No. 8, testified that in agreements entered into by the International, the unit covered always consists of the production employees.

We find that the production employees of the respondent, excepting supervisory, clerical, and shipping employees, constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and such a unit insures to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuates the policies of the Act.

2. Representation by the Locals of the majority in the appropriate unit

The respondent's pay roll for the week ending July 16 shows a total of 70 male and female production employees, exclusive of supervisory, clerical, and shipping employees. Finger testified that on July 12, when the first attempt was made by the Locals to bargain collectively with the respondent, the Locals represented about 46 production employees. In support of his testimony, Finger submitted application cards⁴ for membership in the International which were signed by the applicants and which, in terms, authorized the International to represent them for the purpose of collective bargaining.⁵ No objection was raised to the admission of the cards in evidence; nor was their authenticity questioned. Each of the cards bears a date indicating the date of application for membership. A comparison of these cards with the respondent's pay roll shows that prior to July 12 at least 37 of the 70 production employees of the respondent designated the International, or the Locals acting on behalf of the International, as their representatives prior to July 12.⁶ This number increased to 50 on July 15, the date of the strike, and to 54 on July 26.

We find that on July 12, 1937, and at all times thereafter the Locals were the duly designated representatives of the majority of the employees in an appropriate unit, and, pursuant to Section 9 (a) of the Act, were the exclusive representatives of all the employees in such

⁴ Board's Exhibit, No. 3.

⁵ In addition, Finger submitted two traveling cards and one register check certifying that the persons whose names appear thereon are affiliated with the Locals.

⁶ This number does not include Frank Schmidt who became foreman prior to July 12, and two others whose names, although appearing on the application cards, do not appear on the respondent's pay roll.

unit for 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 9, 1937, officers of the Locals called at the office of the respondent in order to negotiate an agreement covering all the production employees. Ferzig being absent, the purpose of the visit was stated to Morris Novgrod, office manager of the respondent, who arranged a conference with Ferzig for July 12. The conference was held in Ferzig's office and attended by Ferzig, Novgrod, Finger, Zaleski, president of Local No. 8, Minnie Teitelbaum, secretary-treasurer of Local No. 7, and Rose Glassgen, president of Local No. 7. The officers of the Locals told Ferzig that they represented a majority of the employees of the respondent and that they "were anxious to get together with him and see if we could not make a union shop of it, have him recognize us as the bargaining agents." They also assured him, that in view of the fact that the Locals had a majority of the employees, they "felt confident that we could make out an agreement to our mutual satisfaction without having any difficulties whatsoever." Ferzig stated that it did not make any difference to him how many were represented and that he could not see his way clear "to having the union in his shop in any way, manner, shape or form." He further stated that he intended to run his business in his own way and did not want other people to tell him how to do so. According to Finger, Ferzig also said that "he would move out of town where he would not be molested." The officers of the Locals stated their intention of coming back to discuss the matter further. Ferzig advised them that they could come back if they desired but that it would not do any good. Ferzig testified that he told the officers of the Locals that it was useless to bargain because he contemplated moving out on December 1, and that they had better leave the employees alone.

On the following day, David Magzamen and Guiseppi Rivoli were discharged.⁷ These discharges were reported to Local No. 8 by a delegation of employees and were thereafter called to the attention of Local No. 7. Because of the respondent's refusal to recognize and deal with the Locals, and because of the discharges, it was decided to call a strike. Finger, Zaleski, and Miss Teitelbaum went to the respondent's plant on the morning of July 15 and informed the employees that a strike had been called. About 58 employees, including both male and female employees, walked out.

A second meeting, arranged through the efforts of Zaritsky, president of the International, was held on August 24. It was at-

⁷ See *infra*, Part III, C.

tended by Ferzig, Novgrod, Zaleski, Finger, and Taplitz, the executive secretary of the Allied Hat Manufacturers Association. With respect to this meeting, officers of the Locals testified to the following effect: When the meeting began, Ferzig said that he could see no reason for getting together because he was ready to sign a lease for a plant out of town. Officers of the Locals argued that it was unnecessary for him to move since "the New York market was the market he wanted and the buyers concentrated here and it was best for him to stay here and that he would get along with us all right." Ferzig made no further mention of moving at the meeting, and proceeded to make certain suggestions. He felt that he was not in a position to pay higher rates until the beginning of December. Zaleski proposed that the employees return to work at the old rates until November, when new rates would be negotiated. This proposition seemed to be satisfactory to Ferzig and it was tentatively agreed upon. There was also a tentative agreement with respect to the recognition of the Locals. Apparently, the only remaining difficulty was Ferzig's stand that he would not take back certain of the strikers. It was agreed that Taplitz would call Ferzig and arrange another conference in order to come to a definite agreement about the matters which were discussed. Taplitz attempted to arrange such a conference but was unsuccessful.

Ferzig denied that any agreement was reached at this meeting. According to him, he told the officers of the Locals that even if he did take back all except six of the employees, it would be only until December 1, since he intended to move.

A third conference took place on September 2 between Ferzig, Zaleski, Finger, and Miss Teitelbaum. It lasted a short time. According to Zaleski, Ferzig stated, "Well, I have nothing else to talk to you about. I am not going to sign up with your union because I have signed a lease in New Jersey." Ferzig testified as follows: "They wanted to talk to me about reopening the shop. I was talking to them a few minutes only. I told them the lease is signed and I am moving now. That is about all. I went away."

The respondent contends that at the July 12 conference it requested proof of a majority and was refused. Ferzig testified, "Mr. Finger told me he represented the majority in the shop. I told him if that is the case he can go in the factory, call them all out and then we will talk." Even assuming that such a request was actually made, it is apparent that it was not pressed and that it was a matter of complete indifference to the respondent whether or not the Locals represented a majority. Ferzig admitted telling the officers of the Locals that it was useless to bargain because he was moving. Furthermore, there is not an iota of evidence that at the conferences

of August 24 and September 2, the respondent either challenged or denied the claim that the Locals represented a majority.

It is clear that, although the respondent was prevailed upon on several occasions to meet with officers of the Locals, it had no intention of making an honest attempt to arrive at an agreement. The contemplated cessation of operations in New York, and the removal to New Jersey did not relieve the respondent of its obligation to bargain collectively with its employees. As set forth hereafter, the respondent, in making preparation for such removal, was, in fact, motivated by its hostility to the Locals and by its desire to avoid bargaining with them. We find that the respondent on July 12, 1937, and at all times thereafter, refused to bargain collectively with the Locals as the representatives of its employees in respect to rates of pay, wages, hours of employment and other conditions of employment.

B. The removal to New Jersey

The cessation by the respondent of operations in its New York plant and the contemplated removal to Garwood, New Jersey, must be viewed in the light of certain circumstances and events which reflect the attitude of the respondent toward unions and toward the organization of its employees.

The respondent has in the past encountered difficulties in its labor relations. It has had to cope with two strikes, one in 1932 and one in 1934. On both occasions, the strikes were broken and unionization of the plant was prevented. The respondent was, however, obliged to spend a considerable amount of money as a result of these controversies.

Soon after the strike of 1934, Ferzig suggested the organization of a "club" among the employees. The purposes of the Omahian Social Club, as set forth in its bylaws,⁸ were "voluntary mutual assistance, and the fostering of a spirit of fraternity among the men." The respondent's attorney was retained to act for the club and was paid for his services with a check of the respondent. Simultaneously with the organization of the club, an agreement⁹ was drawn up by the attorney for the respondent providing, in part, that the members shall work for the respondent for a period of three years at terms and prices to be fixed yearly by the respondent and the club; that the question of discharges shall be considered by a duly authorized committee of the club; and that the respondent shall contribute to the club a sum equal to the membership dues. The respondent was represented at meetings of the club by Novgrad and the foreman. Late

⁸ Board's Exhibit No. 6.

⁹ Board's Exhibit No. 7.

in 1936 the club was dissolved because the respondent broke the agreement by reducing the rates for piece work.

Jack Goldstein, who was the first president of the Omahian Social Club and in the employ of the respondent until April or May 1937, testified that during the existence of the club, Frank Virelli, one of the respondent's employees, was discharged. No reason for his discharge was given to the club committee. Goldstein, however, who discussed the question with Novgrod, was told that Virelli was discharged because he was active in union matters and was attempting to organize the plant.

Jack Goldstein further testified that Novgrod spoke to him about the Union a number of times and told him that "they are not afraid of the union," and that "the union cannot harm them." On the occasion, late in 1936, or early in 1937, Ferzig told him that "if he was going to be bothered by the union he would move out of town."

The organizational activities among the respondent's employees, which finally culminated in the unionization of the plant, began in May 1937. A number of witnesses testified with respect to the general fear and apprehension which accompanied such activities. Employees who had joined Local No. 8 were afraid to reveal their membership lest they be discharged. Their fears proved not unfounded. On June 15 Magzamen was discharged for the first time. He was reinstated the following day but was warned, however, that he had "better stop talking." Early in July Novgrod and Glinn, who was then foreman, attempted to learn from Rivoli the names of the employees who urged him to sign a union application. On July 13, the discharges of Magzamen and Rivoli took place.¹⁰

In the middle of August, the respondent made an unsuccessful attempt to secure a contempt order against a number of strikers on the basis of an injunction granted in 1934.

Shortly thereafter, on September 3, the respondent signed a lease at Garwood, New Jersey, and began to move its machinery.

These incidents all point to the conclusion that the respondent was determined to prevent the unionization of its plant at any cost. It appears that, unable to cope with this strike as successfully as in the past, the respondent finally resolved to move out of New York City.

It is the contention of the respondent that it had intended to move for a considerable time prior to the present strike, because it did not have sufficient space for its operations in the New York plant. Ferzig testified that he had been negotiating for a new plant in various places outside of New York City, but that the buildings he had examined he had found too small for his purposes. Nevertheless,

¹⁰ See *infra*, Part III, C.

late in April or early in May 1937, the respondent subleased a part of its plant in New York City, and incurred expenses in reconditioning the remaining part for the purpose of continuing its operations. The lease on the New York plant expired about that time, and the respondent renewed it for a period of two years. Such preparations were manifestly inconsistent with a continued intention to move. Whether or not the respondent intended moving prior thereto, it is apparent that at that time it decided to remain in New York. Nor can we give any credence to the respondent's contention that it was "cramped" in New York City in the light of the sublease of part of its plant. It is also significant that the respondent admittedly did not search for another plant from March until a few days prior to the strike of July 15.

The respondent asserts further that the factor which finally induced it to sign a lease in Garwood, New Jersey, was the low rental. The rental for the plant in New York City amounted to \$6,000 per year, less \$2,000 per year received by the respondent for the part subleased. At the time of the hearing, the respondent had not yet subleased the remaining part which was used in its operations, thus being subject to a possible liability for the payment of rent for a period of about a year and seven months. The rental on the plant at Garwood, New Jersey, is \$3,150 per year, or \$850 less than the rental paid in New York. Considering, however, the respondent's contingent liability for the rent on the New York plant plus the expenses involved in moving, the possibility of saving rent cannot seriously be regarded as a factor motivating the respondent to move.

We find that the respondent, in closing its plant in New York City and preparing to remove operations to Garwood, New Jersey, was motivated by its hostility to the Locals, its desire to avoid collective bargaining, and by its intention to discourage membership in the Locals, and thus engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

C. The discharges of Magzamen and Rivoli

David Magzamen began work for the respondent as a finisher in July 1936. He had become a member of Local No. 8 two years prior to that time.

After the reconditioning of its plant late in April or early in May 1937, the respondent instituted lower rates for piece work. The employees thereupon sent a committee to Ferzig to discuss the matter. Ferzig suggested that the employees proceed at the new rates for a period of ten days. At the end of that period, the committee again reported the dissatisfaction of the employees to Ferzig. Ferzig refused to discuss the question any further and declared that he "did not want any more committees."

Shortly thereafter, Magzamen began speaking to certain other employees about organizing the plant. He pointed out to them that "the only way is we should organize and that is the only way we can make a living, support our families, otherwise we are lost." He succeeded in enlisting the aid of a few men and together they persuaded other employees to sign applications for membership in Local No. 8.

On June 15, at about 2:30 in the afternoon, when he had finished his pending work, Magzamen approached Glinn, who was foreman at that time, and asked him for additional work. Glinn said: "You are fired." When pressed for a reason, Glinn said: "You have a big mouth, going around talking, organizing the men." Magzamen was taken back the next day when he returned for his pay. Glinn warned him, however, by saying, "Now, listen, you had better stop talking. I am a new man, myself, and here to make a living and do not want to see any trouble in the shop."

At the time of this discharge, nothing was said to Magzamen about his work. Magzamen further testified that prior to his organizational activities he had met with no particular unpleasantness in his work. A few hats, defective in one respect or another, would be returned to him for refinishing. But this was not unusual and happened to all the finishers at the respondent's plant, particularly in view of the low quality of the hat bodies supplied. Magzamen testified, however, that after his discharge, Glinn "was bothering me right along, shipping me back dozens of hats."

Toward the end of June, Glinn was replaced as foreman by Frank Schmidt, who had himself previously applied for membership in Local No. 8 and was active on various committees of the employees.

On the morning of July 13, after the first attempt at collective bargaining by officers of the Locals, Schmidt told Magzamen that Novgrod had given instructions not to assign him any more work and that he was discharged. He could not tell Magzamen the reason for the discharge but suggested that he ask Novgrod. Schmidt told him that as far as he knew his work was all right. He said: "I do not know what is going on, you had better speak to Mr. Novgrod. He told me not to give you any work, and Mr. Rivoli." Novgrod was equally vague as to the reason for Magzamen's discharge. Novgrod showed him a dozen of his hats which were all trimmed and which Magzamen had finished about a week before. Magzamen testified as follows with respect to the conversation that took place:

. . . I asked him, "what is the matter, Mr. Novgrod?" [He said] "Well, I do not like them, that is all there is to it"

I asked, "What is the matter with them?" Well, he was turning here and there and walked into the office.

Q. He did not give you any answer?

A. No. I asked him, I see Mr. Ferzig. He said it would not help me any. That is about all. I walked out.

Q. Did you ask him the reason for your discharge?

A. I asked him. He did not say anything—"You do not belong here," something like that. "We do not want you here," that is what he said.

Giuseppi Rivoli began work for the respondent as a finisher in January 1937. He worked about three months and then left in order to accept employment in a hat plant in Plainfield, New Jersey. After he had worked for about a month in Plainfield, Glinn sent him a letter requesting him to return to work for the respondent. Rivoli testified that Novgrod was glad to see him back at the plant.

It was at this time that the plant was reconditioned and new rates were introduced by the respondent. Rivoli became dissatisfied with the new rate system because it prevented the finishers from averaging as much as theretofore, and, after working for a period of about two weeks, returned to his former job in Plainfield. At the end of two weeks he again returned to the employ of the respondent, where he remained continuously until his discharge.

Rivoli testified that he never experienced any difficulties because of his work. Furthermore, Glinn assigned him samples and odd hats which required particular attention. He was apparently regarded by Glinn as an expert finisher.

Rivoli became interested in joining Local No. 8 when he resumed work for the respondent for the third time. He found it difficult to obtain information because the members of Local No. 8 were afraid to talk. Finally he asked Schmidt, who had not yet been elevated to the position of foreman. Schmidt furnished him with an application card, which he signed.

One incident to which Rivoli testified is particularly significant. About a week or ten days before he was discharged, and while Glinn was still foreman, the latter, accompanied by Novgrod, approached him and asked, "Who told you to sign application, to join the union?" Rivoli denied that anyone told him. Glinn insisted, "Don't be scared. Tell me." He said that he knew of his (Rivoli's) application because somebody "squealed." Glinn pressed him further, with the reassurance that he "won't tell anybody." In response to Rivoli's query, "Why you want to know those men?" Glinn said, "Well, you know, Joe, I like to know . . . Those men have to get fired." Rivoli replied, "Listen, I quit job, but you never know from my mouth who told me to join the union." The following morning, Glinn again persisted in questioning Rivoli as to the men who told him to join the union.

Shortly thereafter Glinn was replaced by Schmidt as foreman and about a week later, on July 13, Rivoli, as well as Magzamen, was discharged. According to Rivoli, Schmidt came up to his bench and said, "Joe, I am sorry, I got to tell you, I got to fire you." Schmidt assured him that he had no trouble with his work and that he was sorry to lose him, but that he received orders from Novgrad to discharge him. As in Magzamen's case, Novgrad said, "I don't like your work", and showed him a dozen of his hats. Rivoli testified that he requested Novgrad to compare his hats with those finished by someone else and said, "What difference you find in this dozen and that dozen? And take two hats this way and mix them up. Show me the better hat over here now." Rivoli admitted that some of the hats were defectively finished. He testified that he picked up the bad ones himself and showed them to Novgrad. He explained, however, that those hats were made of very poor material, that they were defective when originally finished and were turned in the hope that the other side would be satisfactory, but that they were faulty even then. Rivoli said to Novgrad, "Listen here, this is not the reason you fire a man." But Novgrad simply said, "No, no, you got to go."

The respondent contends that both Magzamen and Rivoli were discharged because of poor workmanship. According to Ferzig, Magzamen was the worst finisher in the plant. The testimony of Schmidt is somewhat contradictory. He stated that if Magzamen and Rivoli "want to work good, then they can produce good hats, that I can guarantee." He also asserted, however, that they were the worst finishers of the whole department. Novgrad testified that Magzamen and Rivoli were neither good workers nor fast workers and that he had for a long time been aware of Magzamen's poor workmanship. Cofone, the assistant foreman, testified that he encountered difficulty with Rivoli's hats two or three days after Rivoli first began work.

Upon all the evidence, credence cannot be given to the respondent's contention that Magzamen and Rivoli were discharged because of inefficiency. Pay rolls of the respondent show that the pay of these two compared very favorably with the pay of the other finishers in the plant and was, in fact, greater than the pay of Schmidt before he became foreman. The comparatively high pay of both Magzamen and Rivoli is inconsistent with their alleged poor workmanship. Hats which were finished badly due to the fault of the finisher were returned for refinishing without additional pay. It is very unlikely, therefore, that a finisher could have earned a satisfactory wage had he been required very often to refinish hats on his own time.

The contention of incompetency is further inconsistent with the duration of Magzamen's employment and with the fact that Rivoli

was rehired several times. Cofone testified that in the latter part of June another finisher was discharged two days after he was hired when Glinn discovered that his work was poor. It is difficult to believe that Magzamen and Rivoli would not have met a similar fate long prior to July 13 if their work were as inefficient as contended by the respondent.

On the basis of all the evidence, we find that Magzamen and Rivoli were in fact discharged because of their affiliation with Local No. 8. The respondent thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

David Magzamen averaged about \$29.00 a week for the first three months of 1937 and about \$20.00 a week for June 1937. He has been unemployed since his discharge. Guiseppi Rivoli averaged about \$25.00 during the time that he was employed by the respondent. Since his discharge he has obtained irregular employment in a hat renovating shop in Newark, New Jersey, earning \$5.00 a day. His earnings from the date of his discharge to the date of the hearing amounted to approximately \$100.00. Both Magzamen and Rivoli desire to return to their former positions in the employ of the respondent.

We find that David Magzamen and Guiseppi Rivoli have not, since their discharges, obtained any other regular and substantially equivalent employment. We will, therefore, order that the respondent offer them reinstatement and, in addition, give them back pay from the date of their discharge until the offer of reinstatement, less any amount earned by them in the meantime.

We have found that the respondent's production workers struck on July 15, 1937, owing to the respondent's refusal to bargain collectively and the discharges of Magzamen and Rivoli. We do not know whether the respondent has since the date of the hearing resumed operations either in its plant at New York City or in its plant at Garwood, New Jersey, or at any other place. However, the respondent was, or will be, upon resuming operations, under a duty to rein-

state the strikers, upon application, to their former or equivalent positions and to restore the status quo which existed prior to the strike. Therefore, we will order that the respondent, at the time it resumes operations, or immediately, if it has already resumed operations, offer to those employees who were on strike on July 15, 1937, reinstatement to their former or equivalent positions, without prejudice to their seniority and other rights or privileges.

If after reinstating its employees pursuant to our order and dismissing employees hired since the commencement of the strike, the respondent determines that the services of any of its staff as then constituted are not required, it may reduce its staff, provided the reduction is made without discrimination against any employees because of their union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business, subject to any modification introduced by agreement with the Locals.

THE PETITION

In view of the Board's findings in Section III-A above, as to the appropriate bargaining unit and the designation of the Locals by a majority of the respondent's production employees as their representatives for the purposes of collective bargaining, it is not necessary to consider the petition of the Locals for certification of representatives. Consequently the petition for certification will be dismissed.

CONCLUSIONS OF LAW

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

1. United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. All the production employees of the respondent, excepting supervisory, clerical, and shipping employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, were on July 12, 1937, and at all times thereafter have been, the exclusive representatives of all the employees of such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. The respondent, by refusing to bargain collectively with United Hatters, Cap and Millinery Workers International Union, Local Nos.

7 and 8, on July 12, 1937, and thereafter, has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. The strike of the employees on July 15, 1937, was a labor dispute within the meaning of Section 2 (9) of the Act.

6. The respondent, by discriminating in regard to the hire and tenure of employment of David Magzamen and Guiseppi Rivoli, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

7. 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.

8. The aforesaid 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 of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Omaha Hat Corporation 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 refusing to bargain collectively with United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, as the exclusive representatives of all its production employees, excepting supervisory, clerical, and shipping employees;

3. Cease and desist from discouraging membership in United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, or any other labor organization of its employees, by discharging and refusing to reinstate its employees, or otherwise discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

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

(a) Offer to David Magzamen and Guiseppi Rivoli, upon resuming operations, or immediately, if operations have already been resumed,

full reinstatement to their former positions without prejudice to their seniority or other rights and privileges;

(b) Make whole David Magzamen and Guiseppi Rivoli 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 he would normally have earned as wages from the date of his discharge to the date of the offer of reinstatement pursuant to this order, less any amount earned by him during such period;

(c) Upon resuming operations, or immediately if operations have already been resumed, offer, upon application, to those employees who were on strike on July 15, 1937, full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges;

(d) Make whole all employees who were on strike on July 15, 1937, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 4 (c) 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 reinstatement, less the amount, if any, which each, respectively, earned during said period;

(e) Upon request, bargain collectively with United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, or, in the event that it resumes or has resumed operations at a place not within the territorial jurisdiction of Local Nos. 7 and 8, the agents duly authorized therefor by United Hatters, Cap and Millinery Workers International Union, as the exclusive representatives of all its production employees, excepting supervisory, clerical, and shipping employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(f) Post notices in conspicuous places at its plant or plants in operation or at its plant or plants where operations will be resumed, stating that the respondent will cease and desist in the manner aforesaid; and maintain said notices for at least thirty (30) consecutive days from the date of posting;

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

The petition for certification of representatives, filed by United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8, is hereby dismissed.