

In the Matter of LANE BRYANT, INC., A MICHIGAN CORPORATION and
RETAIL CLERKS' UNION LOCAL No. 1512 A. F. of L.

Case No. 7-R-1495.—Decided October 22, 1943

Mr. Lester S. Smith, of Detroit, Mich., for the Company.

Mr. Phillip F. Koerner, of Detroit, Mich., for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Retail Clerks' Union Local No. 1512, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Lane Bryant, Inc., a Michigan Corporation, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Detroit, Michigan, on September 25, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded the opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Lane Bryant, Inc., a Michigan Corporation, has its principal place of business in Detroit, Michigan, where it owns and operates a retail store dealing in women's ready-to-wear clothing. All of the capital stock of the Company is owned by Lane Bryant, Inc., a Delaware corporation which operates directly, or through wholly owned subsidiaries, a chain of stores in various sections of the United States.

52 N. L. R. B., No. 261.

As a subsidiary corporation, the Company is subject to the financial control and supervision of the Delaware corporation, which maintains at its New York office a purchasing staff that supplies the Company with part of the merchandise required for the operation of its business. During the period from January 1, 1943, to June 30, 1943, the Company's purchases for resale amounted to approximately \$447,396, of which purchases about 98 percent was purchased and shipped to it from points outside the State of Michigan. During the same period, the Company's Detroit store had gross sales amounting to approximately \$745,000, of which about .4 percent represented out-of-State business. In addition to its usual purchases and sales involving interstate commerce, the Company at times ships overstocked items of merchandise from its Detroit store to other Lane Bryant subsidiaries located outside the State of Michigan.

The Company contends that the substantial purchases of goods from out-of-State sources together with the other factors hereinabove referred to, do not confer jurisdiction upon the Board in the present proceeding. This contention has, however, been raised in previous cases upon facts substantially similar to those shown by the present record and decided adversely to the position taken by the Company.¹ We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Retail Clerks' Union Local No. 1512 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about January 21, 1943, and on several occasions thereafter, the Union, claiming to represent a majority of the Company's employees, requested that the Company recognize it as the bargaining agent of such employees. The Company declined to grant the Union's request for recognition.

¹ See *Matter of Boston Store of Chicago*, 37 N. L. R. B. 1145; *Matter of M. E. Blatt Company*, 38 N. L. R. B. 1210; *Matter of The May Department Stores*, 39 N. L. R. B. 471; *Matter of The J. L. Hudson Company*, 42 N. L. R. B. 536; *Matter of Hearst Mercantile Company*, 44 N. L. R. B. 1342; *Matter of J. L. Brandeis & Sons*, 47 N. L. R. B. 614, 50 N. L. R. B. 325. The position of the Board has been upheld by the Courts in the following court cases: *National Labor Relations Board v. Kudile*, 130 F. (d) 615 (C. C. A. 3), cert. denied 63 Sup. Ct. 436 (January 4, 1943) enforcing *Matter of Rudolf & Charles Kudile, co-partners doing business under the name of Kudile Bros, Hasbrouck Heights Davy*, 28 N. L. R. B. 116; *National Labor Relations Board v. J. L. Hudson Company* 135 F. (2d) 380 (C. C. A. 6); *National Labor Relations Board v. Suburban Lumber Co.*, 121 F. (2d) 829 (314 U. S. 693, cert. denied).

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union urges the adoption of a unit consisting of all employees engaged in selling and handling merchandise, including maids, porters, and elevator operators, but excluding buyers, department heads, office employees, office manager, advertising manager, store manager, and night watchmen. The only issue raised by the Company with respect thereto concerns the office employees whom the Company contends should be included within the appropriate unit. The evidence reveals that, while the Union has been inconsistent in its attitude toward the inclusion of office employees and has entered into consent election agreements including office employees of the Company, the Union has never admitted to membership the employees in this group, the members of which are apparently being organized by a separate A. F. of L. organization known as the Office Workers Union. In view of the fact that office workers constitute a separate identifiable group, representation of which is desired by the Office Workers Union, and since the Board does not as a matter of practice usually place office employees in the same unit with employees performing non-clerical duties, we shall exclude them.³

We find that all employees of the Company engaged in selling and handling merchandise, including maids, porters, and elevator operators, but excluding buyers, department heads, office employees, office manager, advertising manager, store manager, and night watchmen and all supervisory employees who have the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

² The Regional Director reported that the Union had submitted 46 authorization cards, of which 28 bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll dated June 19, 1943, containing 71 names within the claimed appropriate unit.

³ See *Matter of J. L. Brandeis & Sons*, 50 N. L. R. B. 325. The Board has directed an election in a unit otherwise found appropriate, notwithstanding that the petitioning Union had formerly been a party to a consent election agreement embracing employees not requested by the Union in its petition or included in the appropriate unit. See *Matter of Kentucky Fluorspar Company*, 52 N. L. R. B. 227.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit, who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Lane Bryant, Inc., a Michigan Corporation, Detroit, Michigan, an election by secret ballot shall be conducted as soon as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Retail Clerks' Union Local No. 1512, A. F. of L., for the purposes of collective bargaining.