

In the Matter of STAR DYERS & CLEANERS, INC., and AMALGAMATED
CLOTHING WORKERS OF AMERICA, LOCAL 395

Case No. 2-R-4054.—Decided November 8, 1943

Mr. Fred Eichmann, of Union City, N. J., for the Company.

Mr. David M. Schlossberg, of New York City, for the Amalgamated.

Mr. Morris G. Tusher, of New York City, for the International.

Mr. Robert Silagi, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Clothing Workers of America, Local 395, herein called the Amalgamated, alleging that a question affecting commerce had arisen concerning the representation of employees of Star Dyers & Cleaners, Inc., Union City, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing. Pursuant to due notice, said hearing was held on August 16, 1943, and September 23, 1943, at Union City, New Jersey, before Martin I. Rose and Richard J. Hickey, Trial Examiners. The Company, the Amalgamated, and International Association of Cleaning & Dye House Workers, Local #4, A. F. of L., herein called the International, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiners' rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Star Cleaners & Dyers, Inc., a New Jersey corporation, has its principal office and place of business in Union City, New Jersey. The
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Company is engaged in the wholesale and retail garment cleaning and dyeing business. During the year 1942, the Company's purchases of raw materials, consisting principally of oil, solvents, and chemicals used in cleaning and dyeing, amounted to about \$10,000, 25 percent of which was shipped to the plant in Union City from places outside the State of New Jersey. During the same period of time the Company's total business amounted to approximately \$77,000, about 40 percent of which represents work performed on garments which were shipped to points outside the State of New Jersey. During this period the Company owned and operated several trucks which made regular trips between Union City and New York City, bringing and returning garments for processing.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Clothing Workers of America, Local 395, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Association of Cleaning & Dye House Workers, Local #4, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about July 14, 1941, a contract was entered into between the Company and the International for the term of 1 year. Said contract contained a closed-shop provision and a clause which provided for automatic renewal of the contract from year to year unless written notice of cancellation was given by either party 30 days prior to the expiration date. On June 11, 1942, the Company notified the International of its intention to terminate the contract. Thereafter, by written agreement, the parties agreed to extend the term of their contract to August 13, 1943. The International alleges that by subsequent oral agreements the parties continued the contract for 30-day periods until November 1942, when they orally agreed to permit the renewal clause of the contract to take effect, thus extending the life of their contract to July 1943. No notice of cancellation having been given by either party prior to the expiration date in July 1943, the International contends that the contract thereby automatically renewed itself for the period of another year, to July 1944, and thus constitutes a bar to a present election. The Company's counsel testified that there was no agreement to renew the contract, either in writing or orally, beyond November 1942. Uncontradicted evidence shows that the Amal-

gated requested recognition as the collective bargaining representative of the Company's employees, which the Company refused, between May 25 and 30, 1943. The petition herein was filed on June 5, 1943.

We find it unnecessary to resolve the conflict in testimony. Assuming the contract to have been validly renewed to July 1943, both the Amalgamated's request for recognition and the filing of its petition occurred prior to the date on which the automatic renewal clause of the contract could take effect. We, therefore, find that the contract and its purported renewals do not constitute a bar to a present determination of representatives.

A statement of the Regional Director, introduced into evidence at the hearing, and a statement made by one of the Trial Examiners during the course of the hearing, indicate that the Amalgamated represents a substantial number of employees in the unit hereinafter found appropriate.¹

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 parties agree that the appropriate unit should consist of all employees at the Company's Union City plant, including the engineer, benziners, pressers, spotters, and the boilerman, but excluding the store girl, employees of the commission drivers,² clerical and supervisory employees. The parties disagree only as to two classifications, i. e., house drivers and commission drivers. The Amalgamated would include both categories of employees within the unit; the International would exclude them both; the Company expressed no position as to the former but would exclude the latter.

House drivers: In the course of its business, the Company transports garments from tailor shops to the plant where they are cleaned or dyed and then returned. This function is performed by several house drivers who operate company-owned trucks. In addition to acting as chauffeurs, the house drivers, from time to time, perform such activities in the plant proper, as they are directed to do. House

¹ The Regional Director reported that the Amalgamated submitted 13 initiation cards, 8 of which bore the names of persons listed on the Company's pay roll of June 21, 1943, which contained the names of 13 employees in the alleged appropriate unit. All 8 cards bore apparently genuine original signatures and were dated in June 1943.

The International submitted no evidence of representation and relies upon its closed-shop agreement to show its interest in this proceeding.

² Because of his inability to drive a truck, one commission driver employs a helper for that purpose. In addition, some of the commission drivers employ part-time helpers, for the most part school boys, who assist them at irregular intervals. The parties agree that all these individuals should be excluded from the appropriate unit.

drivers are subject wholly to the Company's control and are paid on a combination salary and commission basis.

The International seeks the exclusion of house drivers on the ground that its contract with the Company has always omitted them. This is so, the International alleges, because truck drivers are under the jurisdiction of another affiliated union of the American Federation of Labor. However, the Amalgamated does accept truck drivers such as these into its membership and has contracts in the industry which cover them. Even though the house drivers are not part of the contract unit, nevertheless their wages, working conditions, and terms of employment are entirely controlled by the Company. Under these circumstances, we shall include house drivers in the plant-wide unit.

Commission drivers: The Company has six commission drivers, all of whom have regular routes of tailor shops which they service in the same manner as house drivers. They operate their own trucks and pay all expenses incidental thereto. Once a week the Company debits each commission driver for the cost of processing the garments he has brought to the plant. The commission drivers in turn collect a higher price from the tailors and retain the difference as their own compensation. After deducting operating expenses, commission drivers usually average \$10 or more per week over the house drivers. The Company does not fix the working conditions of the commission drivers as it does for house drivers. Moreover, aside from sorting their garments in the plant so as to facilitate rapid delivery to the tailors, commission drivers spend all their time away from the plant. In view of the substantial dissimilarity between the commission drivers, and the house drivers and production and maintenance employees, with respect to methods of compensation, hours, and working conditions, we are of the opinion that their interests in collective bargaining are not sufficiently akin to warrant their merger in a single unit. We shall, accordingly, exclude commission drivers from the appropriate unit.

We find that all employees of the Company at the Union City plant, including house drivers, the engineer, benziners, pressers, spotters, and the boilerman, but excluding the store girl, commission drivers, employees of the commission drivers, clerical employees, and all supervisory employees with 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.

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 Star Dyers & Cleaners, Inc., Union City, New Jersey, an election by secret ballot shall be conducted as early 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 Second 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 those 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 they desire to be represented by Amalgamated Clothing Workers of America, Local 395, affiliated with the Congress of Industrial Organizations, or by International Association of Cleaning & Dye House Workers, Local #4, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.