

In the Matter of KENT STORES OF WASHINGTON, INC., and CLEANERS AND LAUNDRY WORKERS UNION, LOCAL 188-B, AMALGAMATED CLOTHING WORKERS OF AMERICA

Case No. 5-R-1392.—Decided November 25, 1943

Mr. George L. Weaster, of Baltimore, Md., for the Board.

Mr. George Meyer Thomas, of Washington, D. C., for the Company.

Messrs. Ralph Bernard, Alfred Udoff, and Jack Kutner, all of Washington, D. C., for the Union.

Messrs. Robert Lester and Charles M. Andre both of Washington, D. C., for the Teamsters.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Cleaners and Laundry Workers Union, Local 188-B, Amalgamated Clothing Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kent Stores of Washington, Inc., Washington, D. C., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles W. Schneider, Trial Examiner. Said hearing was held at Washington, D. C., on October 20 and 21, 1943. The Company and the Union appeared,¹ 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 an opportunity to file briefs with the Board.

¹ Teamsters Joint Council also appeared by counsel. However, after ascertaining that the Union herein would not claim this proceeding as precedent for the future disposition of laundry drivers, withdrew its appearance. It did not file any motion to intervene.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kent Stores of Washington, Inc., is a corporation engaged in the laundry and dry cleaning business in the Washington, D. C. area. It maintains a plant and offices in Washington, D. C., and 21 retail stores located in Virginia, Maryland, and in the District of Columbia. During the year 1942, the Company's gross sales amounted to approximately \$300,000. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Cleaners and Laundry Workers Union, Local 188-B, Amalgamated Clothing Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the exclusive bargaining representative of certain of its employees unless and until the Union has been certified by the Board in an appropriate unit.

A statement of the Field Examiner, introduced into 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 seeks to represent a unit comprised of all production and maintenance employees of the Company, including drivers, but excluding store clerks, and office, clerical, and supervisory employees. The Company, however, contends that the appropriate unit should consist of all its employees, including store clerks, and office and clerical employees.

Store clerks: The Company employs approximately 54 individuals at its 21 retail stores located in the Washington, D. C., area whom it

² The Field Examiner reported that the Union submitted 68 authorization cards, of which 39 bore apparently genuine original signatures of persons whose names appeared upon the Company's pay roll of September 25, 1943. Said pay roll contained the names of 125 persons. It was indicated in the record that the unit sought by the Union contains approximately 98 persons.

contends should be included within the unit of its employees. These persons receive laundry and wearing apparel from the customers of the Company, hand out receipts, separate the laundry from the cleaning work; and silks from the woolens; in addition they mark the merchandise for identification, and thereafter set it aside to be picked up by the truck drivers for processing in the Company's plant. The articles, after being processed, are returned to the stores, where the store clerks reinspect, assemble, and package them for delivery to the customer upon the latter's demand. These employees do not punch a time clock, as distinguished from the plant employees, who are required to do so. They also receive money on behalf of the Company at their respective stores, whereas plant employees and truck drivers do not have access to funds of the Company. They are under a separate supervisory staff from the plant employees, with whom they have no direct contact and are seldom interchanged. The Union has not attempted to organize any of these employees, contending that there is another labor organization in the vicinity which accepts membership from store employees, and with which it desires to avoid any jurisdictional controversy. Furthermore, none of these employees has evinced any desire or interest in becoming members of the Union. We are of the opinion and find that, under the circumstances hereinabove shown, the interest, duties, and qualifications of these employees are not sufficiently akin to those of the plant employees to warrant their inclusion in a unit with the latter. We shall, therefore, exclude them.³

Clerical employees: The Company desires the inclusion of its clerical and office employees within the unit of production and maintenance employees. However, we are of the opinion that the interests and duties of these employees are not sufficiently aligned with those of the production and maintenance workers to warrant their inclusion in a unit comprised of such workers, and, in accordance with our usual practice, we shall exclude them.⁴

The Union contends that the following employees are supervisors, whereas the Company contends to the contrary, and maintains that they should be included within the unit.

Isadore Turkoff: The Company considers this employee an "all round man" with no specified job, whereas the Union contends that he is an assistant manager. He is the brother of the plant superintendent, receives \$50.00 a week, a sum greatly in excess of the next highest paid

³ Cf. *Matter of National Laundry, Inc.*, 36 N. L. R. B. 1204. In that proceeding the Board excluded those store employees who did not perform productive or processing work but included those who performed marking and sorting operations. In the instant case among store clerks there is no such division of functions.

⁴ See *Matter of National Laundry, Inc.*, footnote 3, *supra*; *Matter of American Linen Service Company*, 36 N. L. R. B. 565.

non-supervisory worker, and also receives a considerably more substantial bonus than do other employees.⁵ He does not punch a time clock, as do the remaining plant employees, and the record discloses evidence which indicates that these employees regard him as a supervisor. We are of the opinion that there are sufficient distinguishing characteristics in Turkoff's position to show that his interests are more allied with management than with the rank and file employees. We find that he is a supervisory employee, and shall exclude him from the unit.

Fontana: The Company operates a tailoring department consisting of a single male tailor, Fontana, and four women who perform miscellaneous sewing operations. Fontana receives \$50.00 per week, whereas the next highest paid employee in the group receives \$27.50 per week. Although Fontana issues instructions to one of the women who is assigned to assist him, it does not appear that he has the power to make recommendations affecting the status of any of his coworkers. We are of the opinion that the relationship of Fontana to his coworkers is more that of a skilled artisan to his helpers; he does not possess those powers which would place him within our customary definition of a supervisor. Accordingly, we shall include him within the unit.

We find that all production and maintenance employees of the Company at its Washington plant, including drivers and the male tailor, Fontana, but excluding store clerks, office and clerical employees, Isadore Turkoff, and all other 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.⁶

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

⁵ See *Matter of New York Merchandise Company*, 50 N. L. R. B. 237.

⁶ The Union requested that it be designated on the ballot as "Cleaners and Laundry Workers Union, Local 188-B, A. C. W. A.—CIO." This request is hereby granted.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kent Stores of Washington, Inc., Washington, D. C., 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 Fifth 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 temporary 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 or not they desire to be represented by Cleaners and Laundry Workers Union, Local 118-B, A. C. W. A.-CIO, for the purposes of collective bargaining.