

In the Matter of ELY & WALKER DRY GOODS Co. and UNITED GARMENT
WORKERS OF AMERICA, A. F. OF L.

Case No. 15-R-1006.—Decided December 8, 1943

Mr. Henry Davis, of St. Louis, Mo., for the Company.
Mr. Harry Williams, of Paragould, Ark., for the United.
Mr. Frank Schaps, of Chicago, Ill., for the Amalgamated.
Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Garment Workers of America, A. F. of L., herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of Ely & Walker Dry Goods Co., Paragould, Arkansas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David Karasick, Trial Examiner. Said hearing was held at Paragould, Arkansas, on November 23, 1943. At the commencement of the hearing the Trial Examiner granted a motion of Local No. 441, Amalgamated Clothing Workers of America, C. I. O., herein called the Amalgamated, to intervene. The Company, the United, and the Amalgamated appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing the Amalgamated moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. The Trial Examiner's 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

Ely & Walker Dry Goods Co., is a Missouri corporation operating a plant at Paragould, Arkansas, where it is engaged in the manufacture

of boys' and men's shirts. During 1942 the Company used raw materials at its Paragould plant valued at about \$400,000, all of which was shipped to it from points outside the State of Arkansas. During the same period the Company manufactured products at its Paragould plant valued at about \$750,000, approximately 95 percent of which was shipped to points outside the State of Arkansas. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local 441, Amalgamated Clothing Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Garment Workers of America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 22, 1943, the United requested the Company to recognize it as the exclusive collective bargaining representative of the employees at the Paragould plant. The Company refused this request on the ground that it was bargaining with the Amalgamated.

On July 27, 1943, the Amalgamated requested the Company to recognize it as exclusive collective bargaining representative of the employees at the Paragould plant. After checking the Amalgamated membership application cards, the Company notified the Amalgamated on August 4, 1943, that it recognized it as exclusive bargaining agent of the employees at the Paragould plant. However, the Company did not enter into any agreement until September 11, 1943, when it signed a closed-shop contract with the Amalgamated. The Company and the Amalgamated contend that the agreement for recognition of August 4 and the contract executed on September 11, constitute a bar to the instant proceeding. Because a recognition agreement alone does not achieve the desired stability in labor relations, we find that the recognition accorded the Amalgamated on August 4, 1943, is not a bar to a determination of representatives.¹

The Amalgamated further contends that a limitation upon the expenditure of Board funds contained in the current Appropriation Act² precludes the Board from proceeding herein on the ground that the Act in question prohibits it from making a finding in any pro-

¹ The contract signed on September 11, 1943, obviously is not a bar, since it was executed after the United had made its claim.

² *National Labor Relations Board Appropriation Act, 1944*, Title IV, Act of July 12, 1943, P. L. 135, 78th Congress, 1st Session

ceeding in derogation of a contract between management and labor in existence for more than 3 months. Since the limitation referred to has no application to representation cases, but specifically provides that it applies to "a complaint case," the contention is without merit.³

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the United and the Amalgamated each represents a substantial number of employees in the unit hereinafter found to be appropriate.⁴

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

We find, in accordance with an agreement of the parties, that all sewing machine operators, learners, time workers in the sewing room, consisting of bundle boys and pocket creasers, time workers in the cutting room, consisting of cutters, markers, trimmers, spreaders, repair boys, tiers, cutters and spreaders, piece goods checkers, numberers, stampers and bundle boys, pressers in the laundry, time workers in the packing room, consisting of packers, shippers and shirt assorters, machinists' helpers, night watchmen, maintenance men, janitresses, and machine oilers at the Paragould plant of the Company, excluding office and clerical employees, forelady of the dress shirt department, foreman of the pressing department, foreman of the "C" room, forelady of the "W" shirts department, floor girls in the sewing room and laundry, the machinist, 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 means of 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.

³ See *Matter of California Door Company*, 52 N L R B 68

⁴ The Regional Director reported that the United presented authorization cards bearing apparently genuine signatures of 224 persons whose names appear on the Company's pay roll of September 24, 1943. There are approximately 365 employees in the appropriate unit. He further reported that the Amalgamated presented 213 authorization cards bearing apparently genuine signatures of persons whose names appear on the September 24, 1943, pay roll.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Ely & Walker Dry Goods Co., Paragould, Arkansas, 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 Fifteenth 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 any 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 Local 441, Amalgamated Clothing Workers of America, affiliated with the C. I. O., or by United Garment Workers of America, A. F. of L., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.