

In the Matter of W. W. RUSHTON, M. P. RUSHTON, E. WIGHT RUSHTON AND MARY R. THARPE, D/B/A THE RUSHTON COMPANY AND ATLANTA PLAYTHINGS COMPANY and INTERNATIONAL LADIES' GARMENT WORKERS UNION, LOCAL 275, AFFILIATED WITH AMERICAN FEDERATION OF LABOR

Case No. 10-R-1052.—Decided December 18, 1943

Mr. Robert P. McLarty, of Atlanta, Ga., for the Company.

Mr. Joseph Jacobs, of Atlanta, Ga., for the International.

Mr. Jack Mantel, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Ladies' Garment Workers Union, Local 275, affiliated with the American Federation of Labor, herein called the International, alleging that a question affecting commerce had arisen concerning the representation of employees of W. W. Rushton, M. P. Rushton, E. Wight Rushton and Mary R. Tharpe, doing business as The Rushton Company and Atlanta Playthings Company, 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 Atlanta, Georgia, on November 13, 1943. The Company and the International appeared and participated.¹ 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 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 Federal Union No. 22809, affiliated with American Federation of Labor, herein called Local 22809, was served with notice of hearing but did not appear.

53 N. L. R. B., No. 255.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

W. W. Rushton, M. P. Rushton, E. Wight Rushton and Mary R. Tharpe, doing business as The Rushton Company and Atlanta Playthings Company, is a partnership, engaged in the manufacture and sale of stuffed toys and dolls at Atlanta, Georgia. As raw materials the Company uses various types of fabric cotton for stuffing, and special parts, such as eyes, faces, voices, doll shoes, and socks, as well as dress buttons, tags, elastic, and other similar materials. During the fiscal year ending April 30, 1940, the Company purchased raw materials amounting to \$261,528.89 in value, of which 78.3 percent was shipped to Atlanta from points outside the State of Georgia. During the same period, the Company sold its finished products valued at \$546,990.35, of which approximately 95 percent was shipped to points outside the State of Georgia. The Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Ladies' Garment Workers Union, Local 275, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 16, 1943, the International requested the Company to recognize it as the exclusive bargaining representative of the employees. The Company refused for the reason that it was in contractual relationship with Local 22809, and further contended that the contract, hereinafter referred to, was a bar to this proceeding.

On September 12, 1942, following an election, the Board certified Local 22809 as the bargaining representative of the Company's employees in the unit hereinafter found to be appropriate.² The election upon which the above certification was based was held in January 1942, and thereafter, on March 6, 1942, the Company and Local 22809 entered into a closed-shop contract dealing with wages, hours, and other conditions of employment, effective to December 31, 1943. The contract further provided that unless written notice of desire to terminate, review, or modify the agreement was given

² *Matter of The Rushton Company, et al.*, 43 N. L. R. B. 1358.

either party 6 months prior to the expiration date, the contract would be automatically renewed for another calendar year.

On January 2, 1943, the officials and members of the executive committee of Local 22809, by letter, requested the Southeastern Regional Office of the International to accept their membership in the International and to issue them a local charter. The letter stated that the members of Local 22809 were dissatisfied, and that the disintegration of the Local was imminent. Early in March 1943, at a special meeting of Local 22809, attended by about 150 employees of the Company, a motion was made and carried unanimously, except for one person not voting, to change its affiliation to the International. On April 13, 1943, the Southern Office of The American Federation of Labor transferred jurisdiction over the Company's employees to the International. The charter of Local 22809 was also transferred to the International as their subordinate Local No. 275, the officers remaining the same. Under the foregoing circumstances, and in view of the fact that the contract is about to expire and the International has given timely notice of its representation claim, we find that the contract between the Company and Local 22809 does not constitute a bar to this proceeding.³

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the International represents a substantial number of employees in the unit hereinafter found 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, substantially in accordance with a stipulation of the parties, that all production and maintenance employees of the Company, excluding the sales force, clerical and 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.

³ *Matter of Hueneme Wharf & Warehouse Company*, 39 N. L. R. B. 636.

⁴ The Field Examiner reported that the International submitted 93 union designation slips all of which bore apparently genuine signatures; that the names of 80 persons appearing on the cards were listed on the Company's pay roll of October 30, 1943, which contained the names of 201 employees in the appropriate unit. A representative of the International testified that the designation slips were signed on or about October 29, 1943.

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.⁵

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 W. W. Rushton, M. P. Rushton, E. Wight Rushton and Mary R. Tharpe, doing business as The Rushton Company and Atlanta Playthings Company, Atlanta, Georgia, 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 Tenth 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 or not they desire to be represented by International Ladies' Garment Workers Union, Local 275, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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

⁵ The International has waived the right to object to any election ordered herein on the basis of charges filed in Case No. 10-C-1331.