

In the Matter of EVR-KLEAN SEAT PAD COMPANY and UPHOLSTERERS'  
LOCAL NO. 21, AFFILIATED WITH UPHOLSTERERS' INTERNATIONAL UNION  
OF NORTH AMERICA, AFL

*Case No. 14-R-820.—Decided January 18, 1944*

*Mr. Edmond A. B. Garesche*, of St. Louis, Mo., for the Company.  
*Mr. Charles H. Muench*, of St. Louis, Mo., for the A. F. of L.  
*Messrs. Richard Brazier and Henry Scherer*, of St. Louis, Mo., for  
the C. I. O.  
*Miss Marcia Hertzmark*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Upholsterers' Local No. 21, affiliated with Upholsterers' International Union of North America, AFL, herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Evr-Klean Seat Pad Company, St. Louis, Missouri, 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 St. Louis, Missouri, on December 8, 1943. The Company, the A. F. of L., and Local 94, Amalgamated Clothing Workers of America, CIO, herein called the C. I. O., 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 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

Evr-Klean Seat Pad Company, a Missouri corporation with its sole office and place of business at St. Louis, Missouri, is normally engaged

in the manufacture of automobile seat covers but is now engaged almost exclusively in the manufacture of mosquito bars, insect field bars, and haversacks, under contract with the War Department. During the fiscal year ending October 31, 1943, the Company purchased raw materials, consisting principally of cloth and fibre, valued in excess of \$100,000, of which more than 50 percent was shipped to its plant from outside the State of Missouri. During the same period the Company sold approximately \$139,000 worth of finished products manufactured at its St. Louis plant, of which more than 50 percent was shipped to places outside the State of Missouri.

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

## II. THE ORGANIZATIONS INVOLVED

Upholsterers' Local No. 21, affiliated with Upholsterers' International Union of North America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Local 94, Amalgamated Clothing Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On September 30, 1943, the A. F. of L. notified the Company that it represented a majority of the employees and requested recognition as the exclusive bargaining representative. The Company replied by letter of October 8, 1943, that it was under contract with the C. I. O. On October 18, 1943, the C. I. O. requested that the Company agree to certain changes in the afore-mentioned contract and the Company gave its oral assent to some of the changes a few days later. On November 2, 1943, the A. F. of L. again asked the Company to bargain but was informed that the contract with the C. I. O. had been automatically renewed. The A. F. of L. filed its petition herein on November 8, 1943. The C. I. O. contends that its contract with the Company is a bar to our proceeding in the present case. The Company takes no position with reference to this question.

The contract which the C. I. O. contends is a bar to the present proceeding contains the following provision:

This agreement shall remain in force from December 17th, 1940, to October 31st, 1942, and shall automatically continue for similar periods in succession thereafter unless notice to terminate is given in writing by either party hereto at least thirty (30) days before the expiration of the above mentioned periods.

It is understood that either party of Contract may bring up question of wages outlined in this Contract thirty (30) days prior to October 31st, 1941.

The contract appears on its face to provide for renewal periods of approximately 22 months; however it is not clear from the testimony at the hearing whether the parties intended to achieve this result, or to provide for 1-year renewal periods following the original expiration date of the contract. We deem it unnecessary to decide this question since, in either event, the contract does not constitute a bar to this proceeding. If we assume that the contract was intended to provide for 1-year renewal periods after October 31, 1942, the notice served upon the Company by the A. F. of L. on September 30, 1943, was timely in relation to the 30-day period provided in the contract for notice of termination; and the renewal, after notice by the A. F. of L. of its claim to represent a majority, cannot serve as a bar to our proceeding herein. On the other hand, if we assume that the contract was interpreted by the parties in such a way as to provide for renewal periods of approximately 22 months, it cannot constitute a bar to an investigation and certification of representatives since, as we have frequently held, a contract covering an unreasonable length of time and which has been in effect for a year or more does not constitute such a bar.<sup>1</sup> It appears from the record that the usual contract executed by the St. Louis Joint Board of the Amalgamated Clothing Workers of America, with which Local 94 is affiliated, runs for a period of 1 year, with 1-year renewal periods, and there is nothing in the present record to indicate the existence of or the necessity for a different custom applicable to the contract in question.

A statement of the Regional Director introduced in evidence indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>2</sup>

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 A. F. of L., the C. I. O., and the Company agree, and we find, that all employees of the Company, excluding foremen, assistant foremen, errand boys, porters, watchmen, salesmen, office and clerical employees, and supervisory employees with authority to hire, promote,

<sup>1</sup> See *Matter of The Traler Company of America*, 51 N. L. R. B. 1106, and cases cited therein.

<sup>2</sup> The Regional Director reported that the A. F. of L. submitted 27 designations, all bearing apparently genuine, original signatures and 21 bearing the names of persons whose names appear on the Company's pay roll of November 3, 1943, which contains the names of 26 persons in the appropriate unit.

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, 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Evr-Klean Seat Pad Company, St. Louis, Missouri, 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 the direction and supervision of the Regional Director for the Fourteenth 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 of the Company 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 paid 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 election, to determine whether they desire to be represented by Upholsterers' Local No. 21, affiliated with Upholsterers' International Union of North America, AFL, or by Local 94, Amalgamated Clothing Workers of America, CIO, for the purposes of collective bargaining, or by neither.