

In the Matter of VAN RAALTE COMPANY, INC. and TEXTILE WORKERS'
UNION OF AMERICA, C. I. O.

Case No. 3-R-752.—Decided March 23, 1944

Mr. Alger A. Williams, of Buffalo, N. Y., for the Company.

Mr. William M. Duchessi and *Miss Jeanette Watkins*, of Dunkirk, N. Y., for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Textile Workers' Union of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Van Raalte Company, Inc., Dunkirk, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Dunkirk, New York, on February 28, 1944. The Company and the Union 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 the 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

Van Raalte Company, Inc., a New York corporation, is engaged in the manufacture, sale, and distribution of gloves and ladies' underwear. The Company operates seven plants in various parts of the United States including two plants, the only ones involved in this proceeding, located in the city of Dunkirk, New York. During the

period from January 1 to December 31, 1943, the Company used at its Dunkirk, New York, plants, raw materials of the value of approximately \$960,000, of which approximately 15 percent represents shipments made from points outside the State of New York. During the same period, the Company manufactured and sold from its Dunkirk plants finished products valued at approximately \$2,500,000, of which approximately 90 percent represents shipments made to points outside the State of New York. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Textile Workers' Union 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

On or about February 8, 1944, the Company informed the Union in reply to the latter's request for recognition, that it would not recognize the Union as the bargaining representative for its employees unless and until the Union had been certified by the Board.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Union 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 National Labor Relations Act.

¹The Field Examiner reported that the Union had submitted 546 authorization cards, of which 355 bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll of February 6, 1944, containing 1,019 names within the claimed appropriate unit. The Field Examiner further reported that of the 355 cards, 105 were dated prior to March 16 1943, and 184 dated between August 1943 and February 1944, with 66 undated.

The Company contends that inasmuch as the Union's showing of representation is smaller in proportion to that offered by the Union in a prior representation case affecting the Company, on which occasion the Union failed to obtain a majority of the votes cast at the election therein directed by the Board (See *Matter of Van Raalte Company, Inc.*, 47 N L R B. 1160), no question of representation exists and that the petition should by reason thereof be dismissed. Since, however, of the designations submitted by the Union and bearing apparently genuine original signatures of persons whose names are on a current pay roll, more than half are dated subsequent to the prior election, and in view of the fact that a year has now elapsed since the election in the earlier proceeding, we are of the opinion that the usual requirement of an additional showing of representation on the part of a labor organization seeking another election after a prior unsuccessful attempt to gain certification as bargaining representative (See *Matter of Continental Roll & Steel Foundry Company*, 44 N L R B 1051), is inapplicable to the facts as shown by the present record.

IV. THE APPROPRIATE UNIT

We find substantially in accordance with an agreement of the parties that all production and maintenance employees employed by the Company at its No. 1, and Alco plants located in Dunkirk, New York, excluding foremen, foreladies, instructresses, production clerks, office employees, and all other 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Van Raalte Company, Inc., Dunkirk, New York, 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 Third 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 or not they desire to be represented by Textile Workers' Union of America, C. I. O., for the purposes of collective bargaining.