

In the Matter of COHN-GOLDWATER MANUFACTURING Co. and AMAL-
GAMATED CLOTHING WORKERS OF AMERICA, C. I. O.

Case No. 21-R-2084

SUPPLEMENTAL DECISION

AND

DIRECTION

April 10, 1944

On November 15, 1943, the National Labor Relations Board issued a Decision and Direction of Election in this proceeding,¹ wherein the Board found that all production and maintenance employees of Cohn-Goldwater Manufacturing Co., Los Angeles, California, herein called the Company, at its 750 East Twelfth Street Branch plant, excluding truck drivers, foremen, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constituted an appropriate bargaining unit and directed that an election be held among them to determine whether they desired to be represented for the purposes of collective bargaining by Local 125 of United Garment Workers of America, affiliated with the American Federation of Labor, herein called the United,² or by Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Amalgamated, or by neither.

On November 26, 1943, the United filed a motion requesting the Board to withdraw its Decision, stay the election proceedings, and reopen the record for further hearing. On November 29, 1943, the Board, having duly considered the matter, ordered that the election directed to be held among the Company's employees should be held as scheduled by the Regional Director on November 30, 1943; that the Regional Director should not open and count the ballots immediately after the election, but should impound and retain such ballots in his custody pending the further order of the Board; that the record be reopened; that a further hearing be held for the purpose of adducing evidence concerning the industry-wide unit alleged by the United to be appropriate herein;

¹ 53 N. L. R. B. 645.

² Local 125, chartered by the United, admits to membership employees of the Company.

55 N. L. R. B., No. 209.

and that the case be remanded to the Regional Director for the purposes of such further hearing.

Pursuant to the order of the Board, a further hearing was held at Los Angeles, California, on January 28 and 29, 1944, before William B. Esterman, Trial Examiner. All parties appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.³ The rulings of the Trial Examiner made at the further 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:

SUPPLEMENTAL FINDINGS OF FACT

At the original hearing in this proceeding, the Amalgamated contended that production and maintenance employees of the Company's plant at 750 East Twelfth Street, Los Angeles, California, known as the Uptown Branch, constituted an appropriate unit apart from employees at other plants of the Company. Neither the Company nor the United disagreed with this proposed limitation upon the scope of the unit, and upon the basis of the entire record, the Board found that such employees constituted an appropriate bargaining unit.

The Company and the United presently take the position that a unit limited to employees at the Uptown Branch is not an appropriate unit, alleging that Union-Made Garment Manufacturers' Association of America, herein called the Association, of which the Company is a member, has bargained collectively with the United for employees of the Company on an Association-wide basis and contending that such negotiations, extending over a long period of years, have established a history of collective bargaining between the Company and its employees which renders inappropriate a bargaining unit limited to employees at one plant of the Company's operations. The Amalgamated does not agree.

³ During the course of the further hearing the parties agreed to substitute the original of a deposition taken in New York for a copy of the same previously identified in the record and admitted into evidence as "A. F. of L.'s Exhibit 4." (The United is at times in the record called the A. F. of L., and the Amalgamated is called the C. I. O.) The original deposition was not then accompanied by exhibits introduced at the deposition hearing and identified in the deposition. The parties at the further hearing agreed that such exhibits as were not present in the courtroom before the close of the further hearing should become part of the official record in this proceeding as soon as they were received in the Regional Office.

On February 11, 1944, the Regional Director transmitted to the Board at Washington documents marked respectively as "A. F. of L.'s Exhibits 1, 2, 3, 4, 5, and 6," identified as exhibits connected with, and constituting a part of, the New York deposition, noted above, with a stipulation signed by all parties that all such documents should be considered part of the official record herein. In accordance with the stipulation of the parties, the exhibits noted above, as numbered and identified, are hereby made, and are, part of the official record in this proceeding.

About 1903 a group of competing garment manufacturers, all of which used the trade union label of the United, formed an employers' organization called Union-Made Garment Manufacturers' Association of America, to which reference is made above, for the purpose of regulating conditions governing the use of the trade union label of the United by employers in the garment industry. Between 1903 and 1908, the Association and the United, as organizations, negotiated orally with respect to wage conditions in factories of members of the Association which were imposed by the United as a condition for the use of its trade union label by those employers. During this period the Association and the United entered into many wage agreements concerning the minimum wage rates for piece-work operations performed by employees in the garment factories of Association members. In 1908 "with the object of removing, so far as possible, all cause for misunderstanding and friction and of promoting to the greatest degree the mutual helpfulness of the two organizations," the Association and the United entered into a formal written agreement relating to the general use of the trade union label by members of the Association. This trade-union-label agreement, in substance, provided that a joint committee, made up of representatives of the two organizations, be appointed for fixing minimum wage rates for new work operations in garment factories; that the termination date of contracts between the employer members of the Association and the United should be uniform; that the United would not permit its trade union label to be used by non-members of the Association on terms more favorable than those granted to members of the Association; and that the United should give to the Association 1 week's notice of intention to withdraw its trade union label from a member of the Association, and thereafter allow a 15-day period to the Association for the adjustment of differences between its member and the United before the threatened withdrawal of the trade union label should become effective. Written extensions of this agreement were executed until 1913. Oral extensions then followed. On December 14, 1943, after the issuance of our Decision and Direction herein, the parties entered into a new written extension for a 2-year period. In 1941, and again in 1942, the Association and the United agreed in writing to percentage increases in the minimum wage rates fixed by the joint committee. On June 23, 1943, the same parties entered into an agreement for a further increase, if and when such increases should be approved by the National War Labor Board and a proportional increase in the selling price of garments made under these conditions should be allowed by the Office of Price Administration.⁴

⁴ At the further hearing, the United contended that the agreement of June 23, 1943, constituted a bar to a determination of representatives pursuant to the petition of the Amalgamated, filed herein on July 27, 1943. We do not agree. The contract is of

Individual members of the Association, as employers, as well as other employers who use the trade union label, enter into uniform agreements with the United, whereby, in consideration of its use of the trade union label of the United, the employer in substance agrees that its employees shall be members of the United in good standing and that "union" wages, hours, and conditions shall be maintained at its plants, and the United, *inter alia*, agrees to do all in its province as a labor organization to advertise the goods and otherwise benefit the business of the employer. These agreements extend for a term of 1 or 2 years and contain provisions for renewal, subject to termination on 60-day notice. They contain no mention of the 1908 contract between the Association and the United; they make no reference to the employer party thereto as a member of the Association; nor do they even mention the Association. Association membership is not a condition for the use of the trade union label and it may be revoked at any time. Employer members of the Association do not expressly bind themselves to accept and adopt in their factories the minimum wage rates agreed upon from time to time by the joint committee of the Association and the United, although so far as the record discloses no employer member of the Association has repudiated the minimum wage rates agreed upon by the joint committee, which the Association and the United have contracted shall constitute the lowest rates upon which permission to use the trade union label may be granted to any employer.

The Company became a member of the Association in its infancy, and representatives of the Company have been active in Association affairs. Prior to 1939, the Company entered into trade-union-label agreements, described above, covering employees at its plants. In 1939, after the Company opened its Uptown Branch, it entered into a trade-union-label agreement with Local 125, which the parties intended, and presently agree, covers employees of the Company at its Uptown Branch, although the contract, by its terms, is not expressly limited to any specific group of the Company's employees.⁵ This agreement by its terms provides for a 1-year term, and is renewable thereafter indefinitely, subject to termination on 60 days' written notice.⁶

indefinite duration and wholly contingent No petition for the increase was filed with the National War Labor Board with a view to rendering the agreement operative until on or after October 6, 1943. Moreover, the contract, like the 1908 agreement and its renewals, does not define the scope of the bargaining unit of employees affected thereby, nor does it purport to be consummated between an employer and the exclusive bargaining representative of any employees. Under these circumstances we find that the contract of June 23, 1943, is not a bar to a determination of representatives at this time.

⁵ The Company manufactures other than cotton garments at this plant and not the type of work clothes made at its other plants.

⁶ Since this agreement has been in operation more than 1 year and since it is presently subject to revocation on 60 days' notice by either party thereto, we found in our original Decision, contrary to the contention of the Company and the United, that the agreement of 1939 constitutes no bar to a present determination of representatives

Thus, negotiations between the Association and the United for a period covering about 40 years have set up a method of determining certain minimum piece-work rates which, by agreement between the Association and the United, have constituted minimum wage rates in factories of all employers in the garment industry who use the trade union label of the United. Actual wages paid to employees in the same work categories by the several Association members who use the trade union label are, however, not uniform. They admittedly vary and have been the subject of separate negotiations between the individual employers and local unions affiliated with United. Only in the sense that each member of the Association has, in a separate contract, agreed to establish "union" conditions at its plant in consideration of the use of the trade union label, do the minimum wage scales established by the joint committee of the Association and the United constitute a "master contract" to which individual contracts between members of the Association and locals of the United are respectively subject.

We are of the opinion that, while the negotiations between the Association and the United constitute, in a literal sense, "collective" bargaining, they differ both in purpose and in scope from the process termed collective bargaining which is the concern of the Act and which we often regard as determinative of appropriate units. Whether or not the Association has the capacity to act as an employer within the meaning of the Act, and whether or not the relations between the United and the Association have given rise to binding contracts, it is clear that the negotiations between the two bodies have not preempted the field of collective bargaining. Not only have the resulting agreements been silent with respect to rates of pay, hours of work, settlement of grievances, and other conditions of employment of employees of Association members, but the United has never undertaken to negotiate written contracts covering such employees in any defined unit for a fixed term of years covering specific substantive conditions of employment at their several plants.⁷ The written agreement executed in 1908, which has been the basis of negotiations between the Association and the United, concerned only the use of the trade union label by Association members. No written extension of the 1908 agreement was, so far as the record discloses, executed between 1913 and the date of the original hearing in this proceeding.⁸ Neither the 1908 contract between the Association and the United nor any of the three subsequent contracts for increases in the wage scale determined by their joint committee purports to define the scope of the bargaining unit of employees affected thereby, nor does the United purport to be the exclu-

⁷ Cf. *Matter of Corn Products Refining Company*, 52 N. L. R. B. 1324.

⁸ We have not attributed to oral agreements alone the full significance of the term "collective bargaining." *Matter of The Yale and Towne Manufacturing Company*, 44 N. L. R. B. 1259, 1262; *Matter of Ecor, Inc.*, 46 N. L. R. B. 1035, and cases cited therein.

sive bargaining representative of any group of employees described therein. The United moreover, has never made any claim to represent a majority of employees in an Association-wide unit although it has negotiated with the Association concerning their minimum wage scales since 1903.⁹ Each member of the Association has entered into one or more separate contracts with the United or its locals covering employees of one or more plants and, as an individual employer, has dealt directly with that organization concerning employees immediately affected by such contracts.¹⁰ The Company has admittedly contracted with the United for the employees in the unit herein claimed appropriate by the Amalgamated. Under these circumstances we find that the negotiations between the Association and the United have not established a past history of collective bargaining for employees of the Company on any broad substantial basis which would render bargaining on an individual plant basis at this time inappropriate for the Company's employees at the Uptown Branch.

We regard this case as clearly distinguishable from the *New Bedford Cotton Manufacturers' Association* case,¹¹ wherein we came to an opposite conclusion. In the cited case we found that by virtue of written agreements negotiated between an employers' association and a council of craft unions, uniform base rates for the employees of all member employers had been fixed; grievance machinery had been established; provision for the settlement and final arbitration of disputes, including those affecting member mills individually, through the offices of the employer association and the union council had been made; and uniform seniority rules and other uniform conditions of employment affecting employees in all mills owned by members of the association had been established. In consideration of this substantial bargaining on an association-wide basis, we held that appropriate association-wide bargaining unit had been established, despite the fact that, due to variations in the fabric used and in the efficiency of machinery installed in the several mills, specific piece rates and work assignments were determined in the first instance by negotiations between the employers individually and the craft unions involved.¹² In the instant case, we cannot similarly predicate upon the provisions of the written agreement of 1908 between the Association and the United concerning the use of the trade union label, and their subsequent oral understandings relative

⁹ Cf. *Matter of Endicott Forging & Manufacturing Co.*, 29 N L R B. 218, 221.

¹⁰ *New England Overall Co., Inc.*, is a member of the Association. Cf. *Matter of New England Overall Co., Inc.*, 25 N L R B 326

¹¹ *Matter of New Bedford Cotton Manufacturers' Association*, 47 N L R B 1345

¹² In *Matter of Central Foundry Company*, 48 N L R B 5 9, we similarly appraised the significance of an individual plant contract against a background of multiple-employer negotiations, holding "Where substantial and significant matters of collective bargaining are treated on a multiple-employer basis, the existence of a single unit comprising the employees of such employers is not affected by the fact that certain matters not covered by the association-wide agreement are the subject of negotiation in the individual plants" (Italics supplied)

to its extension between 1913 and the date of the hearing, a conclusion that substantive conditions of employment for the employees of the Association members have been established by comprehensive collective bargaining on an Association-wide basis and that negotiations upon an individual employer basis have been merely incidental thereto.

Since neither the United nor any other labor organization, so far as the record discloses, at present claims to represent a majority of employees in an Association-wide unit, it is unnecessary for us to determine whether under other circumstances the Company's employees might be appropriately included in an Association-wide bargaining unit. In 1939, Local 125 and the Company entered into a contract which they agree covers employees at the Uptown Branch.

For reasons noted above, this contract constitutes no bar to a determination of representatives at this time. The Amalgamated at present claims to represent a majority of the Company's employees and has submitted evidence that it represents a substantial number of them. Under the circumstances noted above, and upon the entire record in this proceeding, we find no reason to change our finding with respect to the scope of the bargaining unit heretofore found appropriate for the Company's employees.

Under these circumstances, we shall direct that the Regional Director open and count the ballots impounded by our previous order and prepare and serve upon the parties a report of the Tally of the Ballots and follow the usual appropriate election procedure set down in our Rules and Regulations.

DIRECTION

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 Cohn-Goldwater Manufacturing Co., Los Angeles, California, the Regional Director for the Twenty-first Region shall, pursuant to the Rules and Regulations of the Board, set forth above, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, open and count the ballots cast in the election held among the Company's employees on November 30, 1943, and thereafter prepare and cause to be served upon the parties in this proceeding a Tally of the Ballots, and take further appropriate procedure, pursuant to the Rules and Regulations, set forth above.