

In the Matter of LOUIS PIZITZ DRY GOODS COMPANY and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, A. F. OF L.

Case No. 10-R-1119.—Decided May 29, 1944

Leader, Hill & Tennenbaum, by Messrs. Ben Leader and Kenneth Perrine, of Birmingham, Ala., for the Company.

Mr. Joseph Jacobs, of Atlanta, Ga., and *Mr. John S. Martin*, of Chattanooga, Tenn., for the Union.

Mr. Max M. Goldman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Ladies' Garment Workers' Union, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Louis Pizitz Dry Goods Company, Birmingham, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Birmingham, Alabama, on March 2, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the Company moved to dismiss the petition. The motion is denied.¹ 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.

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

¹ In the main, the motion is based on the following grounds: the Company is not engaged in commerce within the meaning of the Act; the Union does not seek an appropriate unit; and the Union has not complied with a certain Alabama statute, and hence is not qualified to carry on its activities as a labor organization. These contentions are hereinafter considered, and found to be without merit.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Louis Pizitz Dry Goods Company, an Alabama corporation, maintains offices, warehouses, and a department store in Birmingham, Alabama. In 1943 the Company purchased a wide variety of general merchandise valued in excess of \$3,000,000, of which more than 75 percent was shipped to it from points outside the State of Alabama. During the same period the Company sold goods at retail valued at about \$7,000,000, of which about \$2,500 was shipped to points outside the State of Alabama. The Company's mail order business for the year 1943 exceeded \$40,000 in value.

Despite its contention to the contrary, we find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATION INVOLVED

International Ladies' Garment Workers' Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.³

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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.

² See *J. L. Brandeis & Sons*, 53 N. L. R. B. 352, and cases cited therein.

³ The Alabama statute referred to in the Company's motion to dismiss is No. 298, Session of 1943, amending Title 26 of the Code of Alabama, known as the Bradford Act. The Company's position is, in effect, that the Union has failed to meet the registration and/or the filing of annual reports, requirements of the Statute, and hence cannot be a qualified representative of the Company's employees. Although the Bradford Act subjects a labor organization to a civil penalty for failure to comply with its provisions and makes it a misdemeanor for an agent of a violating labor organization to collect dues "while such labor organization is in default with respect to filing the annual report . . .," it contains no provision disqualifying a defaulting labor organization from engaging in collective bargaining.

⁴ The Field Examiner reported that the Union submitted 15 authorization cards; that the names of 12 persons appearing on the cards were listed on the Company's pay roll of February 1, 1944, which contained the names of 22 employees in the appropriate unit; and that the cards were dated as follows: 6 in 1939, 1 in 1941, 6 in 1943, and 2 undated.

IV. THE APPROPRIATE UNIT

The Union seeks a unit of all sewers, fitters, cutters, pressers, and alteration employees in all the sewing and alteration rooms attached to merchandising departments in the Company's department store. The Company contends that the unit sought is inappropriate and apparently takes the position that either a store-wide unit, including the retail sales employees, is appropriate, or that separate units coextensive with each of the merchandising departments are appropriate.

The sewing and alteration rooms involved are attached to the men's and boys' clothing, women's apparel, slip covers and drapery, and fur departments, respectively. Each of these departments with its respective sewing and alteration room is located in a different part of the store, and each sewing and alteration room is set off from the rest of the department to which it is attached. These departments have their own heads who supervise both the sales and the sewing and alteration room employees. Each sewing and alteration room is manned by skilled sewers, fitters, cutters, and pressers who fit and alter merchandise purchased in their department. The Company does not have a practice of transferring employees from one sewing and alteration room to another. All the Company's employees are paid on a salary basis, are subject to the same store rules, and have the same hours of employment.

Although there are facts indicating the feasibility of a store-wide unit or departmental units, we note that no labor organization claims to represent the employees in such a unit or units. For the past 5 years, the Union has limited its organizational activities among the Company's employees to the group it now seeks to represent. Moreover, the work of alteration-room employees is, and has been, traditionally regarded as a skilled trade. In view of the fact that those employees organized and sought to be represented by the Union constitute a homogeneous group of employees who are identified with a traditionally recognized craft, we are of the opinion that they may constitute an appropriate unit apart from the other employees of the Company.

We find that all sewers, fitters, cutters, pressers, and alteration employees in all of the sewing and alteration rooms attached to merchandising departments in the Company's department store, excluding all 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.⁵

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 Louis Pizitz Dry Good Company, Birmingham, Alabama, 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, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

⁵ See *Matter of J. L. Brandeis & Sons*, 47 N. L. R. B. 614; and *Matter of Bond Stores, Inc.*, 56 N. L. R. B. 26.