

In the Matter of KAMEN PRODUCTS CO., INC. and TEXTILE WORKERS  
UNION OF AMERICA, GREATER NEW YORK JOINT BOARD, C. I. O.

*Case No. 2-R-4640.—Decided June 10, 1944*

*Solomon & Schein*, by *Mr. Aaron L. Solomon*, of New York City,  
for the Company.

*Mr. David N. Fields*, of New York City, for the C. I. O.

*Mr. Thomas Powers*, of New York City, for the A. F. L.

*Mr. Joseph Lepie*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Textile Workers Union of America, Greater New York Joint Board, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Kamen Products Co., Inc., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon Novak, Trial Examiner. Said hearing was held at New York City on May 22 and 24, 1944. At the hearing, the Trial Examiner granted a motion to intervene made by the Sailmakers and Canvas Workers Union, Port of New York, Local 16719, A. F. of L., herein called the A. F. L. The Company, the C. I. O., and the A. F. L. 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. 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kamen Products Co., Inc., is a New York corporation, with plants at 327 De Kalb Avenue and 53 Hope Street, Brooklyn, New York.

56 N. L. R. B., No. 239.

This proceeding concerns the employees in the plant located at 53 Hope Street, where the Company is engaged in the manufacture of canvas products. During the year 1943, the Company purchased raw materials valued at approximately \$700,000, of which 90 percent was shipped to the Hope Street plant from points outside the State of New York. During the same period, the Company's finished products amounted in value to approximately \$1,250,000, of which a substantial portion was shipped 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 ORGANIZATIONS INVOLVED

Textile Workers Union of America, Greater New York Joint Board, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Sailmakers and Canvas Workers Union, Port of New York, Local 16719, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On March 10, 1944, the C. I. O. advised the Company it represented a majority of the Company's employees at the Hope Street plant and requested recognition as their exclusive bargaining representative. The Company refused this request on the ground that its Hope Street plant employees were covered by a valid and existing contract with the A. F. L.

Both the Company and the A. F. L. contend that their agreement, dated March 9, 1943, and effective until June 30, 1944, constitutes a bar to this proceeding. However, since this agreement will expire less than 1 month from the present time it does not preclude a present determination of representatives.<sup>1</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found 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.

<sup>1</sup> *Matter of Flunkote Company*, 55 N. L. R. B. 1442.

<sup>2</sup> The Field Examiner reported that the C. I. O. submitted 106 designations and that the names of 92 persons appearing on the designations were listed on the Company's pay roll of April 20, 1944, which contained the names of 173 employees in the alleged appropriate unit. The A. F. L. relies on its contract as evidence of its interest in this proceeding.

## IV. THE APPROPRIATE UNIT

The C. I. O., the A. F. L., and the Company agree that all production, maintenance, and shipping employees of the Company at its Hope Street plant, excluding clerical and office employees, executives, 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 an appropriate unit.<sup>3</sup> The parties are in disagreement, however, with respect to the inclusion of William Seelig, the C. I. O. desiring his exclusion on the ground that he is a supervisory employee, and the Company and the A. F. L. requesting his inclusion.

Seelig is at present included in the unit covered by the Company's contract with the A. F. L. He is employed as a cutter on the day shift, and works with a group of employees located on the third floor of the Hope Street plant consisting of one other cutter and two assistant cutters. The two remaining cutters on the day shift work as a group on the first floor. The Company does not have a foreman in charge of the day shift cutters. Although Seelig is designated on the Company's pay roll as a "cutter foreman," he merely carries out, jointly with the other members of his group, the instructions which he personally receives from the Chief of Operations in respect to the work of the group. Seelig has no authority to hire, discharge, or effectively recommend any change in status of the members of his group. He is an hourly paid worker, as are the other cutters, and receives the same rate of pay. All Company foremen listed as supervisors on the pay roll are salaried employees who spend most of their time directing the work of others. Inasmuch as Seelig is not a supervisory employee, within the meaning of our customary definition, we shall include him in the unit.

We find that all production, maintenance, and shipping employees of the Company at its Hope Street plant, including the day shift "cutter foreman," but excluding clerical and office employees, executives, and all other 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.

<sup>3</sup> The existing contract covers the Company's "Canvas Department." The parties agree that this is the same unit which the C. I. O. seeks, the Hope Street plant being commonly called the "Canvas Department."

## 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.<sup>4</sup>

## 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 Kamen Products Co., Inc., New York City, 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 Second 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 they desire to be represented by Textile Workers Union of America, CIO or by Sailmakers and Canvas Workers Union, Port of New York, Local 16719, A. F. of L., for the purposes of collective bargaining, or by neither.

<sup>4</sup> The C. I. O. and the A. F. L. requested that they be designated on the ballot as their names appear in the Direction of Election.