In the Matter of CHICAGO CURLED HAIR CO., HORWICH VITKIN CO., AND GENERAL FELT PRODUCTS CO. *and* TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Case No. 13–R–2389.—Decided June 26, 1944

Jacobson, Nierman & Silbert, by *Mr. David Silbert*, of Chicago, Ill., for the Company.

Messrs. Leon M. Despres, *William J. Tullar*, and *Earl F. McGrew*, of Chicago, Ill., for the C. I. O.

Mr. Joseph M. Jacobs, of Chicago, Ill., for the A. F. of L., and *Mr. Alfred Rota*, of Chicago, Ill., for Local No. 702.

Mrs. Augusta Spaulding, 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, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Chicago Curled Hair Co., Horwich Vitkin Co., and General Felt Products Co., Chicago, Illinois, herein collectively called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Russell Packard, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 9 and 11, 1944. The Companies, the C. I. O., and Hair, Felt, and Jute Workers' Union Local No. 702, chartered by Upholsterers International Union of North America, affiliated with the American Federation of Labor, appeared and participated.[1] During the course of the hearing, and subsequent to the hearing, the Companies and the A. F. of L. moved that the Board dismiss this proceeding. The Trial Examiner did not rule on the motions. For reasons which appear in Section III, below, the motions are denied. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on

[1] Hair, Felt and Jute Workers' Union, Local No. 702, herein called Local No 702, and its parent body, herein called the A. F of L, each entered an appearance in this proceeding.

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 COMPANIES

Chicago Curled Hair Co., Horwich Vitkin Co., and General Felt Products Co. are three separate Illinois corporations under common ownership and with common officers. All operations of the three Companies are directed from the executive office of Chicago Curled Hair Co. Although the Companies maintain their separate legal entities for tax and other purposes, they conduct their manufacturing operations under one employment policy and as one business.

The three Companies are engaged in the manufacture of curled hair, the processing of animal hair of all types, and the manufacture of hair and felt products. Chicago Curled Hair Co. has a current volume of business in excess of $750,000, of which 75 percent is sold and shipped in interstate commerce. Horwich Vitkin Co. has a current volume of business in excess of $250,000, of which 65 percent is sold and shipped in interstate commerce. General Felt Products Co. has a current volume of business of approximately $1,000,000, of which 80 percent is sold and shipped in interstate commerce.

We find that the Companies are engaged in commerce, and that they constitute a single employer, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

Upholsterers International Union of North America is a labor organization affiliated with the American Federation of Labor. Hair, Felt and Jute Workers' Union, Local No. 702, is a local of Upholsterers International Union of North America and admits to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 15, 1940, the C. I. O. filed a petition for investigation and certification of the Companies' employees. On May 6, 1940, the C. I. O., the A. F. of L., and the Companies entered into a consent election agreement. Pursuant to the agreement, an election was held, and the

A. F. of L. won the election. On June 22, 1940, the Companies and the A. F. of L. entered into an exclusive bargaining contract with a closed-shop provision. The contract provided that it should be effective as of June 1, 1940; that it should continue in full force and effect until May 30, 1943; and, further, that unless on or before April 1, 1943, either party gave notice in writing to the other of an intention to change any or all terms of the agreement, all such terms should continue in full force and effect for an additional period of 3 years.

On May 20, 1943, the A. F. of L. and the Companies entered into a formal "extension" of their 1940 agreement wherein they affirmed that the contract had been renewed by operation of the automatic renewal clause for an additional 3-year term, until May 30, 1946. On June 1, 1943, the C. I. O. filed a petition for investigation and certification of the Companies' employees in Case No. 13–R–1853. A representative of the Board's Regional Office informed the C. I. O. that the contract between the Companies and the A. F. of L. constituted a bar to an election at that time. On July 17, 1943, the C. I. O. withdrew its petition in Case No. 13–R–1853. On March 27, 1944, the C. I. O. filed the petition in the instant proceeding.

The Companies and the A. F. of L. contend that their 3-year extension agreement is operative until May 30, 1946, and that consequently it constitutes a bar to this proceeding. The C. I. O. opposes this contention. In support of their position, the contracting parties rely on the Board's decision in *Matter of Owens-Illinois Pacific Coast Company*,[2] wherein the Board held that a 2-year contract was of reasonable duration and refused to direct an election at the beginning of the second year of the contract term, although there was a considerable shift of union membership among the employees concerned. The Board based its refusal to direct an election in the cited case on the custom of the employer to make 2-year contracts with affiliates of the contracting union and of the competing union and on the custom of the contracting union to make 2-year contracts with other firms in the same industry. The Companies herein are presently performing their second 3-year contract with the A. F. of L. The Companies are the only employers manufacturing curled hair as a product in the Chicago area. The Companies also make pads of curled hair and felt. The record does not disclose the comparative quantity or value of such products made by them. Other pad and stuffing manufacturers in the Chicago area, who use other filling material, contract for their employees on terms of 1 year. Affiliates of the A. F. of L. bargain for employees in the upholstery and frame industries in the Chicago area on 3- and 5-year terms. The curled hair industry is admittedly limited

[2] 36 N. L. R. B. 990.

in scope. Crown Products Company at Philadelphia, allied with the Companies in this proceeding by common ownership and control, manufactures products similar to those of the Companies and bargains with the C. I. O. for its employees on a 3-year basis. Only two other concerns making similar products in other locations are named in the record. These firms presently bargain with the representatives of their respective employees on a yearly basis, although one of them in the past made a contract for 3 years' duration.

In many cases the Board has enunciated the rule, now well recognized in the law of collective bargaining, that a contract for a term of several years or of indefinite duration is not a bar to representation proceedings filed at the end of the first contract year.[3] In the *Owens-Illinois* case, cited above, we were persuaded that the existence of a custom in the glass industry, apparently national in scope, justified an exception to that rule in the case of a 2-year contract. In the instant case, however, the evidence set forth above is, in our opinion, insufficient to establish that there exists any such industrial custom[4] as would warrant us in withholding a determination of representatives for the full term of a 3-year contract. Since the renewal contract in question has now been in effect for more than a year, we find that it is not a bar to an election at this time.

A statement prepared by a Board agent and other evidence introduced at the hearing indicate that the C. I. O. represents a substantial number of employees in the bargaining unit herein found appropriate.[5]

We find that a question has arisen concerning the representation of the Companies' employees, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in accordance with the substantial agreement among the parties, that all production and maintenance employees of the Companies, including shipping and receiving employees, but excluding office and clerical employees, hair spinners, timekeepers, boiler room employees, and all supervisory employees with authority to hire, pro-

[3] See *Matter of The Trailer Company of America*, 51 N L R B 177, *Matter of Rosedale Knitting Company*, 23 N L R. B. 527; and cases cited therein

[4] Aside from the fact that the 3-year term does not appear to be a universal custom among firms producing curled hair, we note that the record is inconclusive as to whether the Companies should properly be classed as members of the pad and stuffing industry, the curled hair industry, or the upholstery industry

[5] The C I O. presented to a Field Examiner 111 cards, of which 110 were dated in 1944 and 1 was undated. During the course of the hearing, the C. I. O submitted to the Trial Examiner for checking 76 additional cards, of which 1 was dated in March 1941, 4 were undated, and the remaining were dated in 1944. None of these cards was checked against a pay roll of the Companies

In support of its claim to represent the Companies' employees, the A F of L did not submit any cards. It relies upon its contract to disclose its interest among them.

mote, 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.[6]

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 Chicago Curled Hair Co., Horwich Vitkin Co., and General Felt Products Co., Chicago, Illinois, 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 Thirteenth 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 Companies 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 the 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 they desire to be represented by Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, or by Hair, Felt, and Jute Workers' Union, Local No. 702, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[6] Employees within the appropriate unit have been covered under the contracts between the Companies and the A. F of L Boiler room employees and hair spinners bargain with their employer through affiliates of the A. F of L. in separate bargaining groups.