

In the Matter of DICKSON-JENKINS MANUFACTURING COMPANY and
UNITED GARMENT WORKERS OF AMERICA, A. F. L.

Case No. 16-R-944.—Decided August 5, 1944

Samuels, Brown, Herman and Scott, by *Mr. John W. Scott*, of Fort Worth, Texas, for the Company.

• *Miss Emily Jordan and Mr. R. F. Cadena*, of San Antonio, Texas, for the AFL.

Messrs. George Clifton Edwards, and George Lambert, of Dallas, Texas, for the CIO.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Garment Workers of America, A. F. L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Dickson-Jenkins Manufacturing Company, Fort Worth, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert F. Proctor, Trial Examiner. Said hearing was held at Fort Worth, Texas, on June 24, 1944. The Company, the AFL, and Amalgamated Clothing Workers of America, Local 303, C. I. O., herein called the CIO, 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 Trial Examiner reserved for the Board rulings on the CIO's motion to dismiss the petition and the AFL's motion to exclude the CIO from the ballot. For reasons hereinafter stated, the said motions are hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The CIO's request for oral argument before the Board is hereby denied. 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

Dickson-Jenkins Manufacturing Company, a Texas corporation, is engaged in the manufacture of work and play clothes at its factory in Fort Worth, Texas. During the calendar year 1943, the Company purchased raw materials, consisting of cotton, thread, buttons, snaps, etc., valued at approximately \$450,000, of which about 90 percent was shipped into the State of Texas from other States. In the same period of time, the Company's sales of its manufactured products amounted to approximately \$1,000,000, of which about 50 percent was made to purchasers located outside the State of Texas.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Garment Workers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Amalgamated Clothing Workers of America, Local 303, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The CIO has been the bargaining representative of the Company's employees since January 2, 1940, pursuant to certification by the Board.¹ On July 29, 1943, the Company and the CIO entered into a contract which is to expire on July 29, 1944. In April 1944, the CIO and the Company executed a supplementary agreement also to expire on July 29, 1944. On May 5, 1944, the AFL notified the Company of its claim to represent a majority of the Company's employees and on May 22, 1944, filed the petition in the instant case. Notwithstanding this notice of a conflicting claim to representation, the Company and the CIO executed a new contract on June 20, 1944, to become effective July 29, 1944, and to terminate July 29, 1945. The CIO claims that the aforesaid contracts are a bar to the present proceeding. The Company is neutral and will bargain with whichever union is certified by the Board in an appropriate unit. The CIO's position is untenable. Under rules repeatedly enunciated by the Board, neither the contract which is to expire on July 29, 1944, nor the

¹ *Matter of Dickson-Jenkins Manufacturing Co.*, 19 N. L. R. B. 22.

contract of June 20, 1944, executed after notice to the Company that the AFL claimed to represent a majority of the Company's employees, constitutes a bar to the present proceeding.²

A statement of a Board agent, and additional evidence submitted to the Trial Examiner at the hearing indicate that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.³

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.

IV. THE APPROPRIATE UNIT

We find, in substantial accord with the agreement of the parties, that all seam openers, pressers, cutters, cutters' helpers, bundle boys, service help, operators, and shipping clerks,⁴ excluding office and clerical employees, foremen, foreladies, 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 an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The AFL urges that the CIO be excluded from the ballot on the ground that the latter failed to offer any proof of present substantial representation among the Company's employees. The contract relationship which has existed between the Company and the CIO is sufficient, in the absence of any proof that the said union is defunct, to entitle the CIO to a place on the ballot.⁵

Pursuant to the supplementary agreement executed in April 1944, the CIO and the Company on June 15, 1944, jointly submitted to the National War Labor Board for approval, a proposed piece-work incentive system which the CIO claims will result in increased earnings

² See *Matter of A. H. Bull Steamship Company*, 36 N. L. R. B. 99, and cases cited therein; *Matter of Globe Mills*, 41 N. L. R. B. 94; *Matter of Hall Manufacturing Company*, 40 N. L. R. B. 14.

³ The Field Examiner reported that the AFL submitted 196 authorization cards, of which 7 were duplicates; that the names on 118 of these cards also appeared on the Company's pay roll of May 20, 1944, which contained the names of 253 employees in the appropriate unit; and that the cards were dated between July 1943 and May 1944. At the hearing, the AFL submitted 16 additional authorization cards to the Trial Examiner. The names on 8 of these cards also appeared on the Company's pay roll of May 20, 1944; 15 of the cards were dated in June 1944, and 1 in May 1944. The CIO relies on its contract to establish its interest.

⁴ There are no employees of the Company presently classified as shipping clerks. Mr. Ward, a foreman, in addition to his other duties, is also acting as shipping clerk. All parties agreed to his exclusion from the unit because of his supervisory duties.

⁵ *Matter of Southern Car and Manufacturing Company*, 29 N. L. R. B. 1061

to the Company's employees.⁶ In its brief, the CIO requests postponement of the election until after the National War Labor Board has acted on its application for wage increases. The CIO there contends (1) that an immediate election will create turmoil and adversely affect production, (2) that to order an immediate election would result in a clash of procedure with the National War Labor Board before whom the application for an increase in wages is pending, and (3) that an election, before the National War Labor Board has acted on the application submitted to it, would be unfair to the CIO in that the CIO would be deprived of the opportunity of pointing to the wage increases which it has negotiated as proof of its services as the bargaining agent. The foregoing contentions, however, present no basis for departing from our customary practice in setting the date for the election hereinafter directed.⁷ Accordingly, 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Dickson-Jenkins Manufacturing Company, Fort Worth, Texas, 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 Sixteenth 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

⁶ The National War Labor Board on June 2, 1944, approved an earlier application for a wage increase submitted jointly by the CIO and the Company.

⁷ The contentions of the CIO suggest that the pendency of the National War Labor Board proceeding should also be construed as constituting a bar to the instant proceeding. However, since the CIO's certification by the Board is more than 4 years old, and it has thus been afforded ample opportunity to obtain substantial benefits for the employees by virtue of its exclusive bargaining status during that period, it is clear that the pendency of the proposal for a wage increase before the National War Labor Board is no bar to a present determination of representatives. See *Matter of International Harvester Company*, 55 N. L. R. B. 497; *Matter of Matheson Alkali Works*, 55 N. L. R. B. 1100; *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268; *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928.

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 United Garment Workers of America, affiliated with the American Federation of Labor, or by Amalgamated Clothing Workers of America, Local 303, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

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