

IN the Matter of KARL EISNER, LESLIE RONAY, BERTHA EISNER AND MARIA RONAY, CO-PARTNERS, D/B/A YORK FEATHER AND-DOWN COMPANY and BEDDING, CURTAIN AND DRAPERY WORKERS UNION, LOCAL 140, OF THE UNITED FURNITURE WORKERS OF AMERICA, C. I. O.

Case No. 2-R-4831.—Decided August 24, 1944

Mr. John W. Keating, of New York City, for the Company.

Mr. Harry Weinstock, of New York City, for the C. I. O.

Messrs. Delson, Levin and Gordon, by *Mr. Harold F. Levin*, of New York City, for the A. F. L.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Bedding, Curtain and Drapery Workers Union, Local 140, of the United Furniture Workers of America, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Karl Eisner, Leslie Ronay, Bertha Eisner and Maria Ronay, co-partners, doing business as York Feather and Down Company, of Brooklyn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James C. Paradise, Trial Examiner. Said hearing was held at New York City on July 17, 1944. The Company, the CIO, and Home Decorative Crafts Workers Union, Local 601, of the Upholsterers International Union of North America, A. F. of L., herein called the AFL, 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:

57 N. L. R. B., No. 260.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

York Feather and Down Company, a New York partnership, is engaged in the business of processing feathers and down for the United States Army at its plant in Brooklyn, New York. During the past year the Company used in its manufacturing processes raw materials valued in excess of \$100,000, of which approximately 33 $\frac{1}{3}$ percent was received from points outside the State of New York. During the same period the Company manufactured finished products valued in excess of \$500,000, of which approximately 75 percent 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

Bedding, Curtain and Drapery Workers Union, Local 140, affiliated with the United Furniture Workers of America, C. I. O., and Home Decorative Crafts Workers Union, Local 601, affiliated with the Upholsterers International Union of North America, A. F. of L., are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about May 29, 1944, the CIO requested the Company to bargain with it as the representative of its employees. The Company refused asserting that it had entered into a contract with the AFL on August 6, 1943, covering practically the same employees. The 1943 contract expires on August 31, 1944, and provides for the automatic renewal thereof in the absence of 60 days' notice prior to the expiration date by either party of a desire to change the contract. The record is not definite as to whether or not the Company or the AFL contends that the contract is a bar to this proceeding. However, since the CIO's claim to representation was made to the Company prior to the effective date of the automatic renewal clause, it is clear that it cannot preclude a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹The Field Examiner reported that the CIO submitted a petition containing 18 apparently genuine original signatures of persons designating it as their collective bargaining agent; that the names of 16 persons appearing therein were listed on the Company's pay roll of June 15, 1944, which contained the names of 21 employees in the appropriate unit; and that the petition was dated May 29, 1944.

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, substantially in accordance with the agreement of the parties, that all production employees, including employees in the shipping department, and maintenance employees and truck drivers who do production work, but excluding maintenance mechanics who do not work on production, watchmen, office and clerical employees, foremen and all or 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The CIO requests that the pay-roll period immediately preceding the hearing be used to determine eligibility to vote in the election. We find, however, that the reasons urged by the CIO, in support of its request, are not sufficient to warrant deviating from our usual practice.

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 Karl Eisner, Leslie Ronay, Bertha Eisner and Marie Ronay, co-partners, doing business as York Feather and Down Company, of Brooklyn, New York, 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 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 Bedding, Curtain and Drapery Workers Union, Local 140, affiliated with the United Furniture Workers of America, C. I. O., or by Home Decorative Crafts Workers Union, Local 601, affiliated with the Upholsterers International Union of North America, A. F. of L., 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.