In the Matter of National Rose Spring & Mattress Company and United Furniture Workers of America, Local #282, Affiliated with Congress of Industrial Organizations

Case No. 15-R-1178.—Decided October 20, 1944

Messrs. David N. Harsh and Newell N. Fowler, of Memphis, Tenn., for the Company.

Messrs. W. A. Copeland and Walter Carson, of Memphis, Tenn., for the Union.

Miss Ruth Rusch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Furniture Workers of America, Local #282, affiliated with Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of National Rose Spring & Mattress Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at Memphis, Tennessee, on Septem-The Company and the Union appeared and participated. ber 14, 1944. 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 Union's petition on the grounds that there was no question of representation and that the proposed unit is indefinite. The Trial Examiner reserved ruling on the Company's motion for the Board's determination. For reasons stated in Sections III and IV, infra, the Company's motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a Tennessee corporation engaged at its plant in Memphis, Tennessee, in the manufacture, sale, and distribution of mattresses, springs, upholstered furniture, and furniture. During the last year, the Company purchased raw materials consisting of cotton, wool, fabrics, wood, and steel of which approximately 50 percent was shipped from sources outside the State of Tennessee. For the same period, the Company's finished products amounted to approximately \$2,000,000 in value, of which 50 percent was shipped to points outside the State of Tennessee.

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

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, Local #282, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 6, 1944, a Union representative asked the vice president of the Company for recognition as the bargaining representative of the Company's production and maintenance employees. The vice president stated that he would have to notify the Company's attorney and the president, both of whom were out of town; but no efforts were made thereafter to communicate with the Union representative. On July 7, 1944, the petition in the instant proceeding was filed.

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

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.

¹The Field Examiner reported that the Union submitted authorization cards, 96 of which bore the names of persons listed on the Company's pay roll, which contained the names of 149 employees in the appropriate unit. There were 22 cards dated in May 1944, 58 dated in June 1944, and 16 were dated in July 1944.

IV. THE APPROPRIATE UNIT

The Union seeks to represent the Company's production and maintenance employees throughout the entire plant, excluding clerical and supervisory employees. The Company asserts that the proposed unit is too indefinite for purposes of collective bargaining and that the petition should be dismissed. We do not find the unit indefinite and we have denied the Company's motion to dismiss the petition on this ground.

The Company, which is making cots for the Army in addition to its usual line of springs and mattresses, contends that separate units should be established for the employees in the cot department and for the warehousemen and truck drivers. The Company maintains that there is no mutuality of interest or interchange of work between the employees in these departments and those in the rest of the factory. The cot department, where the Company manufactures both Army cots and baby cribs, is a section of the mattress department.2 The Company maintains that the employees in the cot department are only temporary employees, inasmuch as it anticipates early cancelation of its Army contract, which would result in discontinuance of the manufacture of There is no showing, however, that the employees in the cot department are substantially different from the Company's other employees in respect to their qualifications or the character of the operations in which they are engaged. We see no reason to exclude them from the plant-wide unit.

The Company has five truck drivers, apparently engaged in driving the Company's trucks for local pick-up and delivery. It employs seven laborers in what it terms the "warehouse" classification. No other labor organization is seeking to represent these employees. We shall include them in the unit.

We find that all production and maintenance employees including employees in the cot department, truck drivers, and warehousemen, but excluding clerical employees and 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.

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 em-

² The crib department, which has been in existence for approximately a year, was organized to utilize materials which were left from the manufacture of cots.

ployees in the appropriate unit who were employed during the payroll 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 National Rose Spring & Mattress Company, Memphis, Tennessee, 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 Fifteenth 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 Reoulations, 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 or not they desire to be represented by United Furniture Workers of America, Local #282, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.