

In the Matter of THE SOUTHEASTERN OPTICAL CO., INC.¹ and TRANSPORT WORKERS UNION OF AMERICA, CIO (OPTICAL DIVISION)

Case No. 10-R-1285—Decided November 25, 1944

Shutts, Bowen, Simmons, Prevatt & Julian, by Mr. H. N. Boureau, of Miami, Fla., for the Company.

Messrs. Edward C. Holman and Richard Downes, of Miami, Fla., for the Union.

Mr. Samuel G. Hamilton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Transport Workers Union of America, CIO (Optical Division), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Southeastern Optical Co., Inc., Miami, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George S. Slyer, Trial Examiner. Said hearing was held at Miami, Florida, on October 27, 1944. The Company and the Union 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 here 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

The Southeastern Optical Co., Inc., is a Virginia corporation licensed to transact business in the State of Florida, having its gen-

¹ Name as amended at the hearing.

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eral offices and principal place of business in Richmond, Virginia. A majority of its stock is owned by Bausch and Lomb Optical Co., Rochester, New York. It is engaged in the processing of optical elements and in the manufacture and wholesale distribution of optical merchandise, instruments, and machinery. It also sells, distributes, and services store and office equipment used by optometrists and oculists. It owns and operates 26 wholesale outlets or agencies in eight southeastern States, including Florida, where it has outlets at Jacksonville, Tampa, St. Petersburg, Miami Beach, and Miami. The Miami agency is the only one involved in the instant case. Purchases of raw materials by this agency during the calendar year 1943 amounted to \$78,936, all of which were received from without the State of Florida. Sales of this agency's finished products were valued at \$159,852, of which \$17,831 worth was shipped to Puerto Rico and \$7,320 worth to Haiti and Panama, among other points outside the State of Florida. Purchases and sales of the Miami agency during 1944 were substantially the same as during 1943.

The Company admits solely for the purpose of this proceeding, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Transport Workers Union of America (Optical Division), affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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

The parties are in agreement that all production and maintenance employees at the Miami, Florida, agency of the Company, including

²The Field Examiner reported that the Union submitted 17 authorization cards, that the cards were "dated between July and September," and that there were 23 employees in the unit alleged in the petition to be appropriate.

billing clerks, stockroom clerks, and messengers, but excluding the manager, assistant manager, bookkeeper, receptionist, secretary to the manager, and all other clerical employees, comprise an appropriate unit. They are also in agreement with respect to the inclusion of working foremen.

There is testimony to the effect that the two working foremen³ have the authority to discharge, discipline, and regulate the work of employees in their respective departments. It appears from the record that, as recently as June of this year, one of the working foremen⁴ actually discharged an employee. Accordingly, despite the agreement of the parties, we shall exclude the working foremen on the ground that they are supervisory employees.

We find that all production and maintenance employees at the Miami, Florida, agency of the Company, including billing clerks, stockroom clerks, and messengers, but excluding the bookkeeper, receptionist, the secretary to the manager, and all other clerical employees, the manager, assistant manager, working foremen, 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.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Southeastern Optical Co., Inc., Miami, Florida, 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 Tenth Region, acting in this matter as agent

³ Joe and A. P. Grimes.

⁴ A. P. Grimes.

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 or not they desire to be represented by Transport Workers Union of America, CIO (Optical Division), for the purposes of collective bargaining.