

In the Matter of BROWNSTEIN-LOUIS COMPANY and AMALGAMATED
CLOTHING WORKERS OF AMERICA, LOS ANGELES JOINT BOARD, C. I. O.

Case No. 21-R-2471.—Decided December 11, 1944

Mr. George A. Elstein, of Los Angeles, Calif., for the Company.
Messrs. H. Schneid and Jerome Posner, of Los Angeles, Calif., for
the ACWA.

Mr. James B. Comer, of Los Angeles, Calif, for the UGWA.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Clothing Workers of America, Los Angeles Joint Board, C. I. O., herein called the ACWA, alleging that a question affecting commerce had arisen concerning the representation of employees of Brownstein-Louis Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Los Angeles, California, on November 14, 1944. The Company, the ACWA, and the United Garment Workers of America, AFL,¹ herein called the UGWA, 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Brownstein-Louis Company, a California corporation engaged in the manufacture of shirts, sportswear, and work clothing, has a plant

¹ At the hearing the Trial Examiner granted the motion of the UGWA to intervene.

and offices in Los Angeles, California. During 1943 the Company purchased over 90 percent of its raw materials valued in excess of \$100,000, outside the State of California. During the same period, the Company shipped approximately 30 percent of its finished products valued in excess of \$400,000 outside the State of California.

We find the Company to be engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Clothing Workers of America, Los Angeles Joint Board, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On January 3, 1944, the Company and the UGWA entered into a contract for 1 year, which provides that in the absence of notice of termination given by either party 60 days before the termination date, the contract is automatically renewed for "1 or 2 years." No notice has been given. The ACWA requested recognition of the Company as the collective bargaining representative of its production employees on August 1, 1944. The Company, by letter dated August 3, 1944, refused recognition on the ground that it was presently operating under a contract with the UGWA covering the same employees as those requested by the ACWA. At the hearing both the Company and the UGWA moved to dismiss the petition, alleging that the contract constituted a bar to a present determination of representatives. Since the ACWA filed its petition on August 11, 1944, more than 2½ months prior to the automatic renewal date of the contract, we are of the opinion that the request of the ACWA was timely made and that the contract is no bar to a present determination of representatives.² The Company further moved for dismissal of the petition on the ground that the rider to the Appropriations Act³ precludes the Board from proceeding herein. Since the provision in question clearly indicates that it is applicable to "complaint" cases rather than to repre-

² *Matter of Mill B, Inc.*, 40 N. L. R. B. 346.

³ N. L. R. B. Appropriation Act, 1945, Act of June 28, 1944, P. L. 373, 78th Congress. The provision in question is as follows:

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for 3 months or longer without complaint being filed by an employee or employees of such plant . . .

sentation proceedings, we find the contention of the Company to be without merit.⁴

A statement of a Board agent, introduced into evidence at the hearing, indicates that the ACWA represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 production employees, but excluding all office and clerical employees, salesmen, 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 employees 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 Brownstein-Louis Company, Los Angeles, California, 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 Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to

⁴ See *Matter of Letellier-Philips Paper Co., Inc.*, 54 N. L. R. B. 1111 and cases cited therein.

⁵ The Field Examiner reported that the ACWA submitted 67 membership cards; that there are approximately 110 employees in the appropriate unit; and that the cards were dated: 31 in August 1944; 29 in September 1944; 7 in October 1944. The Company refused to submit a payroll. The UGWA relies on its contract with the Company to show its interest.

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 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 Amalgamated Clothing Workers of America, Los Angeles Joint Board, C. I. O., or by United Garment Workers of America, AFL, for the purposes of collective bargaining, or by neither.