

In the Matter of WIEBOLDT STORES, INC. and INTERNATIONAL FUR AND LEATHER WORKERS UNION, LOCAL 45, AFFILIATED WITH THE C. I. O.

Case No. 13-R-2571.—Decided December 12, 1944

Messrs. Pope & Ballard, by Messrs. Ernest S. Ballard and Walter I. Deffenbaugh, both of Chicago, Ill., for the Company.

Messrs. Abe Feinglass, Lou Goldstein, and Robert Herbin, all of Chicago, Ill., for the Furriers.

Messrs. Cassela, Potter & Bentley, by Mr. William H. King, Jr., of Chicago, Ill., for the Independent.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Fur and Leather Workers Union, Local 45, affiliated with the C. I. O., herein called the Furriers, alleging that a question affecting commerce had arisen concerning the representation of employees of Wieboldt Stores, Inc., Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert T. Drake, Trial Examiner. Said hearing was held at Chicago, Illinois, on October 19, 20, 21, 25, and November 8, 1944. The Company, the Furriers, and Wieboldt Employees Organization, herein called the Independent, appeared, participated, and 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

Wieboldt Stores, Inc., an Illinois corporation, is engaged in the business of retail selling. For this purpose it operates six department
59 N. L. R. B., No. 170.

stores, a warehouse, and a general office in the city of Chicago, Illinois, and its suburbs. During the calendar year 1943, the Company purchased goods, materials, and merchandise valued in excess of \$10,000,000, more than 50 percent of which was obtained from points outside the State of Illinois. During the fiscal year ending January 31, 1944, the net retail sales of the Company approximated \$37,000,000, of which about $\frac{1}{2}$ of 1 percent represents the value of sales shipped to points outside the State of Illinois.

The Company operates a fur storage department and fur work room in one of its stores. For the year ending January 1944 the fur work room used materials, consisting of findings, skins, linings, and materials for cleaning valued at approximately \$17,700, of which approximately \$4,200 represents the value of such items obtained from points outside the State of Illinois.

As hereinafter noted, the Furriers seeks a unit confined to employees in the Company's fur work room. The Company contends that its fur work room and storage department are not engaged in commerce within the meaning of the National Labor Relations Act; that, for this reason, the activities of the employees of the fur work room alone are not subject to the jurisdiction of the Board; and that the data pertaining to the complete operations of the Company as a whole are irrelevant to this proceeding. We find this line of reasoning to be without merit,¹ and we further find that the Company is engaged in commerce within the meaning of the Act.²

II. THE ORGANIZATIONS INVOLVED

International Fur and Leather Workers Union, Local 45, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Wieboldt Employees Organization is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

The Furriers seeks a unit comprised of all fur repair and service employees of the Company, including cutters, operators, nailers, finishers and assistants, but excluding clerical and office employees, supervisors, and all other employees of the Company. Both the Company and the Independent contend that only a company-wide unit is appropriate.

As hereinbefore noted, the Company's operations are divided among six department stores, a warehouse, and a general office. The Com-

¹ *Matter of Enid Cooperative Creamery Association*, 58 N. L. R. B. 592.

² See *J. L. Brandeis & Sons. v. N. L. R. B.*, 142 F. (2d) 977 (C. C. A. 8), cert. denied October 16, 1944.

pany's only fur work room, wherein the employees sought by the Furriers are engaged, is located at one of the department stores. Prior to 1938, the fur work room was operated by a concessionaire. However, since that time, the employees engaged therein have been Company employees. The work room occupies a space approximately 100 feet square adjacent to a fur storage vault wherein fur garments are stored. Within the same general area of the work room are the desks of clerical employees who perform miscellaneous duties connected with fur storage and the work room. The activities of the work room constitute a service supplied by the store to customers using the fur storage facilities or who have purchased fur coats, and the employees engaged therein perform no manufacturing operations. Many of the employees engaged in the fur work room and in the fur storage section are seasonal workers.

In 1933, the Company recognized the Independent as the collective bargaining representative of its employees in a company-wide unit. Excluded from this unit were employees engaged as operating engineers, electricians, butchers, and plumbers,³ as well as managerial employees. However, employees such as carpenters, painters, laundry workers, bakers, cooks, men's clothing workers and women's clothing workers, groups of employees who are often represented as members of separate bargaining units, were included within the unit represented by the Independent. In 1938, the Company and the Independent signed a collective bargaining agreement setting forth the relationship between them. This agreement is presently in effect, as amended by supplements, amendments, and additions to the original document. It covers all employees of the Company except managerial employees, employees on the pay roll of the Company for less than 60 days, and employees who, in 1938, were members of other labor organizations recognized by the Company at that time. The agreement provides that wages and hours of work shall be set forth in attached schedules which the parties refer to as "Article XII." There have been approximately 50 such "Article XII's" agreed upon between the parties and reduced to writing since the execution of the 1938 contract which regulate the wages and hours of specific departments or groups of employees.

Although no specific "Article XII" covering the employees in the unit proposed by the Furriers was consummated by the parties until July 19, 1944, all general provisions of the 1938 agreement applied and still apply to these employees. On May 20, 1940, the parties reached an oral agreement with respect to wages and conditions of work of the employees engaged in the fur vault and work room.⁴ On May 29,

³ These four groups of employees were represented by labor organizations whose collective bargaining relationship with the Company antedated 1933.

⁴ The rates agreed upon have been adjusted from time to time by oral agreement between the parties.

the Company wrote the Independent, confirming the agreement reached on May 20, "relative to your membership in the fur work room and drapery work room," and stating that it would not enter into a written Article XII incorporating the agreement of May 20 because of the seasonal variations in employment therein. In 1942, the parties agreed that the fur work room employees should be eligible for wage dividends under the Company's profit-sharing system. In the same year, the parties agreed upon a formula for paid vacations for these employees.⁵ In the following year, the Independent took up the question of adjustments in the wages of employees of the fur work room. On April 28, 1944, the parties agreed upon rates of pay for the drapery work room employees, and in June, a similar agreement was reached with respect to the fur work room employees. These agreements were incorporated into an "Article XII" on July 19.⁶ Thereafter, on July 26, the parties filed a joint application with the National War Labor Board seeking an increase in the wages of certain fur work room employees, which was approved by that agency on October 16.⁷ Employees of the fur work room have been members of the Independent for many years. In fact, the Company and the Independent agreed upon a voluntary check-off system which could be canceled by the employee at any time⁸ and employees of the fur work room authorized the Company to deduct Independent dues under this system.⁹

The foregoing facts clearly indicate that, since 1938, the fur work room employees were considered by both the Company and the Independent as part of the collective bargaining unit represented by the latter, and that, since that time, such employees were actually represented by the Independent for the purposes of collective bargaining.

In view of the long history of collective bargaining during which the employees sought by the Furriers were represented as part of a company-wide unit, we find that the unit sought by the Furriers is

⁵ In February 1942 the parties also executed Amendment 7 to the 1938 agreement which eliminated peak week provisions for non-selling departments, including the fur work room.

⁶ The delay in executing the "Article XII" was caused, according to undisputed testimony, by the absence of signatories who were on vacation.

⁷ The record indicates that neither the Company nor the Independent was aware of the organizational activities of the Furriers until July 24.

⁸ Article VI of the 1938 agreement.

⁹ The following chart indicates the number of employees in the fur work room and the number of employees who paid dues to the Independent under the voluntary check-off system:

Dated	Number of employees in fur work room	Number of employees authorizing the collec- tion of dues
November 25, 1939-----	6	4
October 17, 1940-----	5	3
December 20, 1941-----	13	2
October 10, 1942-----	17	2
October 21, 1944-----	—	3

inappropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.¹⁰

IV. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Since, as indicated in Section III, *supra*, the bargaining unit sought by the Furriers is inappropriate for the purposes of collective bargaining, we find that no question affecting commerce has arisen concerning the representation of employees of the Company in an appropriate unit. Accordingly, we shall dismiss the petition.

ORDER

Upon the basis of the above findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Wieboldt Stores, Inc., Chicago, Illinois, filed by International Fur and Leather Workers Union, Local 45, is affiliated with the Congress of Industrial Organizations, be, and it hereby is, dismissed.

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

¹⁰ See *Matter of L. Ramberger & Company*, 58 N. L. R. B. 144