

In the Matter of WILLIAM W. FITZHUGH, INC. and FOLDING BOX & DISPLAY WORKERS, LOCAL 381, A. F. L., AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS, A. F. L.

Case No. 2-RE-70.—Decided December 23, 1944

Mr. L. L. Balleisen, of New York City, and *Mr. C. S. Barnes*, of Brooklyn, N. Y., for the Company.

Messrs. George Rifkin and *Bernard Cianciulli*, of New York City, for Local 381.

Messrs. Peter A. Tufo and *William Johnson*, of New York City, for the Joint Council.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition filed by William W. Fitzhugh, Inc., Brooklyn, New York, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jerome I. Macht, Trial Examiner. Said hearing was held at New York City on November 16, 1944. The Company, the New York Joint Council International Printing Pressmen & Assistants' Union of North America, A. F. L., herein called the Joint Council, and Folding Box & Display Workers, Local 381, A. F. L., affiliated with the International Brotherhood of Pulp, Sulphite & Paper Mill Workers, A. F. L., herein called Local 381, 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:

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FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

William W. Fitzhugh, Inc., is a New York corporation having its plant in Brooklyn, New York. It is engaged in the manufacture, sale, and distribution of folding boxes and labels. During the past year, it used raw materials amounting in value to in excess of \$250,000, in excess of 50 percent of which came from points outside the State of New York to its Brooklyn plant. During the same period its sales were in excess of \$500,000, of which in excess of 50 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

Folding Box & Display Workers, Local 381, affiliated with International Brotherhood of Pulp, Sulphite & Paper Mill Workers, and New York Joint Council of the International Printing Pressmen & Assistants' Union of North America are both labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 1, 1943, the Company entered into a 1-year contract with the Joint Council. By letter dated August 11, 1944, Local 381 notified the Company of its claim to majority representation and its desire to bargain for the employees of the Company. The Company informed Local 381 that it was under contract with the Joint Council and that it would not recognize Local 381 until it had been certified by the Board. On August 30, 1944, the Joint Council notified the Company of its desire to negotiate for a new contract or an extension of the present contract. The Company informed the Joint Council of the claim of Local 381 and informed it that it would not negotiate with the Joint Council until the Board had determined the question of representatives. On September 13, 1944, the Company filed the petition herein.¹

The Joint Council claims that the existence here of a jurisdictional dispute between two unions affiliated with the same parent organiza-

¹ In August 1944, Local 381 filed a petition in Case No. 2-R-4941, seeking certification in the same unit as sought in the instant case. The Regional Director on September 23, 1944, refused to issue a Notice of Hearing or proceed further with the case. Local 381 appealed the decision of the Regional Director which was denied by the Board on November 9, 1944. The Joint Council claims that the dismissal of the petition in Case No. 2-R-4941 is a bar to a present determination of representatives. We find no merit in this contention.

tion warrants a dismissal of this proceeding. However, the dispute between the Joint Council and Local 381 is one of long duration, and all attempts to settle it by the labor organizations themselves have been unsuccessful. Although the disputants have submitted the controversy to their parent organization for settlement, such settlement has not been effected. In view of these circumstances and of the fact that the Company filed the petition herein, alleging that a question affecting commerce had arisen concerning the representation of its employees, we are of the opinion that this proceeding is properly before us.²

A statement of a Board agent, introduced into evidence at the hearing, indicates that Local 381 represents a substantial number of employees in the unit hereinafter found appropriate.³

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 employees engaged in the production and shipping department but excluding the office and clerical staff, watchmen, janitors, time-keepers, maintenance men, employees in the lithograph department, 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 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,

² See *Matter of B F Gilmour Co., Inc.*, 55 N L R B 767.

³ The Field Examiner reported that Local 381 submitted 59 authorization cards; that the names of 49 persons appearing on the cards were listed on the Company's pay roll of August 16, 1944, which contained the names of 129 employees in the appropriate unit; and that the cards were dated: 3 in October 1939, 1 in October 1941, 17 between February and June 1943, 25 between January and August 1944, and 4 were undated. The Joint Council relied upon its contract with the Company as evidence of its interest.

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 William W. Fitzhugh, Inc., 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 Folding Box & Display Workers, Local 381, A. F. L., affiliated with International Brotherhood of Pulp, Sulphite & Paper Mill Workers, A. F. L., or by New York Joint Council of Printing Pressmen & Assistants' Union of North America, A. F. L., for the purposes of collective bargaining, or by neither.