In the Matter of JUSTIN S. MCCARTY, JR., NOLAN MCGOUGH AND GERTRUDE REED, D/B/A MCCARTY MANUFACTURING COMPANY *and* DALLAS JOINT BOARD, INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL

Case No. 16-R-1053.—Decided December 26, 1944

Messrs. Pat Coon and *Robert L. Clark*, of Dallas, Tex., for the Company.

Mr. Jack Johannes, *Miss Charlotte Duncan*, both of Dallas, Tex., and *Miss Wave Tobin*, of Kansas City, Mo., for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon amended petition duly filed by Dallas Joint Board, International Ladies' Garment Workers Union, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Justin S. McCarty, Jr., Nolan McGough, and Gertrude Reed, copartners, doing business as McCarty Manufacturing Company, Dallas, Texas, herein called the Company,[1] the National Labor Relations Board provided for an appropriate hearing upon due notice before Lewis Moore, Trial Examiner. Said hearing was held at Dallas, Texas, on October 20 and 21, 1944. The Company and the Union 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. Subsequent to the hearing, the Board issued a notice that, unless the Union should present to the Regional Director of the Sixteenth Region, evidence of representation in the Company's plant, hereinafter referred to as Plant No. 2, the Board would consider dis-

[1] The name of the Company was corrected at the hearing by an amendment to the petition setting forth the partnership interest of Gertrude Reed in the Company.

missing the petition as seeking an inappropriate unit. The Union thereafter filed a motion for reconsideration in which it requested oral argument. The Company filed a motion to strike the Union's motion for reconsideration and to dismiss the petition. The motion of the Union is denied and that of the Company is granted for reasons hereinafter stated.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

McCarty Manufacturing Company is a partnership, having its principal place of business in Dallas, Texas, and engaged solely in the manufacture of ladies' garments on the order and for the account of a single customer, Justin McCarty, Inc., Dallas, Texas, hereinafter referred to as the Corporation. The Company does not buy, sell, or cause the shipment of goods in interstate commerce. It does, however, process substantial quantities of raw materials estimated over a period of 6 months to exceed $250,000 in value, which materials are purchased by the Corporation in interstate commerce and delivered to the Company for the purpose of being manufactured into finished products and thereafter sold by the Corporation. While the latter, which admittedly is engaged in interstate commerce, sells the products of the Company in both local and interstate commerce, its annual shipments of such products to points outside the State of Texas exceed $50,000 in value.

We find, contrary to the contention of the Company, that it is engaged in activities affecting commerce within the meaning of the Act.[2]

II. THE ORGANIZATION INVOLVED

Dallas Joint Board, International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

The Union contends that all operators, finishers, pressers, cutters, spreaders, special machine operators, inspectors, and bundle girls, exclusive of office and supervisory employees, floor ladies, maintenance employees, shipping room employees, designers, and stock boy in Plant No. 3 only, constitute a single appropriate unit. The Company, while not opposing the classifications requested, contends that

[2] See *N. L. R. B.* v. *Fainblatt et al*, 306 U. S. 601; *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 318.

the unit should include the employees of Plant No. 2 as well as those of Plant No. 3. The Union maintains that its position is supported by a difference in the products of the two plants and also by the extent of organization among the employees of the Company.

The record discloses that the Company operates two plants, known as Plant No. 2 and Plant No. 3, located on the 9th and 7th floors, respectively, of the same building and closely integrated under the immediate supervision of a superintendent who divides his time equally between the two plants.[3] While the Company is at present operating one plant for the manufacture of coats and suits and the other plant for the manufacture of garments known as "sportswear," both plants are equipped to manufacture either type of garment. The Company expects that, in the event of a slack season, it will manufacture in Plant No. 3 the same garments that are now manufactured in Plant No. 2.[4] In addition thereto, it is clear that, while the employees in the proposed single plant unit are identifiable upon the pay roll of the Company, all such employees bear the same work classifications as those in the other plant; that the employees in the two plants have been frequently interchanged; and that in both plants the employees operate similar machinery and enjoy the same wage rates and other working conditions.

So far as the extent of organization among the Company's employees is concerned, the evidence reveals that the Union began its present campaign to organize the Company's employees about August 21, 1944; and that on September 18, 1944, when the Union filed its petition, the Union had authorizations from a majority of the 50 employees in the plant claimed as the basis of the appropriate unit. There is nothing in the record to indicate that the Union has experienced any opposition in its organizing activities among the employees of the Company.[5] The Union has been organizing concurrently the employees in both plants and stated at the hearing that it was continuing its organization of the employees in the plant not claimed in the present petition.[6]

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[3] The complete authority of the superintendent with respect to hiring and discharging of employees leaves little independent authority to the foremen in the individual plants

[4] The Company stated at the hearing that if it could find a floor large enough it would put all its operations on one floor The evidence indicates that the separation of the two plants is due to the fact that they were acquired by the Company on various occasions from different parties, rather than to any planned arrangement from the point of view of company organization.

[5] There is no evidence that the Company has opposed the activities of the Union or that the employees in the other plant have definitely indicated a lack of interest in collective bargaining.

[6] While the Union declined at the hearing to estimate the number or the proportion of the employees already organized in the second plant, a witness for the Union testified that so far as being ready for an election is concerned, the Union was not afraid of an election in such plant. However, although the Union, subsequent to the hearing, filed with the Regional Director an affidavit to the effect that it had 11 authorizations from approximately 80 employees in the Company's Plant No. 2, it submitted no authorization cards to the Regional Director for his inspection in response to the order of notice referred to above.

In view of the integration of the Company's operations, the similarity of the duties and working conditions and particularly the inchoate state of organization,[7] we find that the unit proposed by the Union is inappropriate. We shall, therefore, dismiss the petition herein.

IV. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Since the bargaining unit sought to be established by the petition is not appropriate as found in Section III, above, we find that no question has arisen concerning representation of employees of the Company within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of Justin S. McCarty, Nolan McGough and Gertrude Reed, doing business as McCarty Manufacturing Company, Dallas, Texas, filed herein by Dallas Joint Board, International Ladies' Garment Workers Union, AFL, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

[7] See *Matter of Newnan Cotton Mills*, 57 N. L. R B. 917; *Matter of Public Service Electric & Gas Company*, 59 N. L. R. B. 51.