In the Matter of ADVANCE PATTERN COMPANY, EMPLOYER *and* PRINTING SPECIALTIES AND PAPER CONVERTERS UNION NO. 362, AFL, PETITIONER

Case No. 20–RC–116.—Decided August 27, 1948

DECISION

AND

ORDER

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer, a New York corporation, is engaged in the manufacture, distribution, and sale of paper dress patterns. All patterns are manufactured in its New York City establishment. Stockrooms are maintained in San Francisco and Chicago. Only the San Francisco stockroom is involved in this proceeding. Patterns shipped from the New York office to San Francisco have an annual value in excess of $65,000. The value of patterns shipped by the San Francisco office to points outside the State of California is in excess of $15,000 annually.

The Employer admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization involved claims to represent employees of the Employer.

3. We find that no question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Employer entered a special appearance and moved to dismiss the petition herein on the ground that the Petitioner had not requested recognition as exclusive bargaining agent before filing the

petition, and that, in the absence of such demand, the requirements of Section 9 (c) (1) [1] had not been met.

The petition showed on its face that no demand for recognition had been made by the Petitioner, and that the Employer had not refused recognition before the petition was filed. The petition contains these questions: "Has the Petitioner notified the employer of claim that a question concerning representation has arisen?" and "Has the employer failed to recognize Petitioner?" Both questions were answered in the negative.

As the Petitioner has not alleged that it requested recognition and that the Employer declined, prior to the filing of the petition, to recognize the Petitioner as the exclusive bargaining representative of the employees here involved, as required by Section 9 (c) (1) of the Act, as amended, we shall dismiss the petition.[2]

ORDER

Upon the basis of the entire record in this case, the National Labor Relations Board hereby orders that the petittion filed in the instant matter be, and it hereby is, dismissed.

MEMBER GRAY took no part in the consideration of the above Decision and Order.

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[1] The pertinent portion of this new section provides that:

"Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf *alleging* that a substantial number of employees (i) wish to be represented for collective bargaining and *that their employer declines to recognize their representative* as the representative defined in Section 9 (a) the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice" (Emphasis supplied.)

Section 9 (c) of the original Act, which contained no provision with respect to the filing of a petition, provided that:

"Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives"

[2] After the filing of the petition, the Union requested recognition of the manager of the San Francisco office. The manager, at that time and again at the hearing, claimed lack of authority to recognize the Petitioner, stating that all her orders came from the New York office of the Employer In *Matter of The S–P Manufacturing Corporation*, 75 N. L. R. B. 701; *Matter of Buckeye Steel Castings Company*, 75 N L R. B. 982; and *Matter of John Royle & Sons*, 75 N. L R B. 1166, we held that a question of representation was presented if, at the time of the hearing, or at any time prior thereto, the Employer had refused to grant recognition. The question of the authority of the San Francisco manager or of the effect of her refusal to grant recognition is not at issue here, however, as the cited cases are distinguishable from the instant case The petitions in the cited cases were filed prior to the effective date of the amended Act, and were thus governed by the practice existing at that time, whereas the petition in the instant case was filed on March 17, 1948, and must therefore be considered in the light of the standards set up by the amended Act