

In the Matter of GENERAL CIGAR CO., INC. and UNITED CIGAR WORKERS
LOCAL 105, AFFILIATED WITH FOOD, TOBACCO, AGRICULTURAL AND AL-
LIED WORKERS UNION OF AMERICA, CIO

Case No. 4-R-1742.—Decided October 18, 1945

Mudge, Stern, Williams & Tucker, by *Mr. Milton Black*, of New York City, and *Messrs. William G. Rothfuss* and *Elmer Krout*, of New Brunswick, N. J., for the Company.

Mr. Armand Ramirez, of New York City, for the CIO.

Mr. Donald H. Frank, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by United Cigar Workers Local 105, affiliated with Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of General Cigar Co., Inc., New Brunswick, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. The hearing was held at New Brunswick, New Jersey, on June 6, 1945. The Company and the CIO 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

General Cigar Co., Inc., is a New York corporation with its principal offices located in New York City. The Company is engaged in the manufacture and sale of cigars. It operates factories in the States

of New Jersey, Pennsylvania, Indiana, Kentucky, and Tennessee; it operates warehouses in Connecticut, Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Wisconsin, Puerto Rico, and Cuba; it operates sales offices in Illinois and California. The New Brunswick, New Jersey, plant is the sole operation of the Company involved in this proceeding. The value of the raw tobacco used at the New Brunswick plant in the year 1944 exceeded \$250,000; all of which came to it from points outside the State of New Jersey. Cigars manufactured at the New Brunswick plant during that year sold for more than \$250,000, of which approximately 93 percent was shipped by it to points outside the State of New Jersey. At the time of the hearing, more than 33 percent of the Company's product was manufactured for the United States armed forces.

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

II. THE ORGANIZATION INVOLVED

United Cigar Workers Local 105 of the Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of the Company's inspectors, on the ground that its inspectors are supervisory employees who cannot be represented by the CIO because that organization presently represents the Company's production employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents the employees involved.¹

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

In a consent election held March 8, 1945,² the CIO was chosen as the exclusive bargaining representative of the Company's production employees, excluding, among others, by consent of the parties, the Company's two inspectors. The CIO agreed to the exclusion of the inspectors in order to expedite that election. The CIO now seeks to include the two inspectors in the production unit, or in the alternative to rep-

¹ The Field Examiner reported that the CIO submitted two application-for-membership cards, and that there are two employees in the unit sought.

² Case No 4-R-1677.

resent them as a separate unit. The Company asserts that these inspectors are supervisory employees who cannot therefore be included in the unit of production employees, and that they cannot be represented in a separate unit by the CIO because it represents the production employees.

At the New Brunswick plant, each tobacco machine is tended by 4 female employees: a filler feeder, a binder layer, and a wrapper layer, who together perform the steps necessary to cigar production and a machine examiner, who checks for obvious defects and takes appropriate action, including patching cigars produced at that machine, and breaking up cigars which cannot be repaired. As the trays of 500 cigars are filled, they are taken, marked with the number of the machine which produced the cigars, to 1 of the 2 inspectors involved. These employees give the cigars a more detailed examination, removing those to be sent back to the machine for repair and those which are rejected altogether. If the total number removed from a tray is small, the inspector usually reports this fact only to the machine examiner, so that she may check the machine for cleanliness or other factors which influence quality or may check the work of the woman at her machine. If the total removed is 10 or more, it is customary for the inspector to report this fact to the foreman so that he can take the necessary action to correct the difficulty. When the trays leave the inspectors, they go to the packing floor, where, in the course of packing, they are inspected by packers, sorters, tray examiners, and banders, who remove any additional defective and rejected cigars. No action can be taken as a result of these inspections because the machine which produced the cigars is not determinable at that stage.

Prior to 1938, inspectors and all employees above the rank of inspector were paid a salary. Since that year inspectors have been paid on an hourly basis, whereas all employees the Company considers supervisory continue to be paid a salary. All the Company's production and maintenance employees, except the women who work the cigar machines, are paid on an hourly basis. The compensation of cigar machine operators is based on their productivity; thus the pay of the girls at any one machine is influenced by the number of "rejects" and by the number of cigars sent back for repair by the inspector. Their actual wages, however, vary only slightly, and are almost the same, when figured on an hourly basis, as that of the inspectors. When an inspector is absent, her place is taken either by a machine examiner, a helper, or a forelady.

The inspectors wear tan aprons which they are required to purchase from the Company. A company witness testified that all the Company's supervisory employees wear tan aprons. The machine opera-

tors wear blue or green aprons. In former years, when the Company held supervisors' meetings, inspectors were invited to attend.

Inspectors have no power to recommend hire, discharge, promotion, demotion, discipline, or change in status of other employees. They have never been asked by a foreman to give their opinion of the work of any machine operator. It is clearly their duty only to inspect the cigars, remove the defective ones, report on cigar production, and inform the machine examiner of the errors being made by her machine operators. Investigation of the facts in an inspector's report may result in changing a woman's position at the machine; it appears, however, that no one has ever been transferred because of errors reported by an inspector.

From the foregoing we find that the inspectors are not supervisory employees within our usual definition, and that they may, therefore, as production workers, properly be included in the previously established unit represented by the CIO.³ The Company concedes that the CIO represents the inspectors as well as the other employees in the existing unit, and that no election is necessary to determine that fact. There is, therefore, no reason for further investigation of the question concerning representation by way of election or otherwise, and we shall dismiss the petition herein.

ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of inspectors of General Cigar Co., Inc., New Brunswick, New Jersey, filed by United Cigar Workers Local 105, affiliated with Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, be, and it hereby is, dismissed.

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

³ *Matter of Decatur Iron and Steel Company (Shipbuilding Division)* 59 N. L. R. B. 1070; *Matter of Sangamon Electric Company*, 59 N. L. R. B. 364; *Matter of The Blakeslee Forging Co.*, 59 N. L. R. B. 17; *Matter of Scott & Williams, Incorporated*, 58 N. L. R. B. 249.