

In the Matter of MACLAREN SPORTSWEAR CORP. and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA, A. F. OF L.

Case No 6-R-1308.—Decided May 28, 1946

Mr. James D. Garvey, of Elkins, W. Va., for the Company.

Mr. Pat Mingarelle, of Fairmont, W. Va., for the Union.

Mr. Elmer P. Freischlag, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by District 50, United Mine Workers of America, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of MacLaren Sportswear Corp., Elkins, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Henry Shore, Trial Examiner. The hearing was held at Elkins, West Virginia, on April 16, 1946. The Company and the Union appeared and participated.¹ 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 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

MacLaren Sportswear Corp. is a New York corporation having plants in Philipsburg, Pennsylvania, Buckhannon, West Virginia, and Elkins,

¹ The Union has filed a waiver of any right to object to any election which may be held in the instant proceeding on the basis of any of the acts alleged as unfair labor practices in Case No. 6-C-1015.

West Virginia. At its Elkins plant, which is alone involved herein, it is engaged in the manufacture of sport shirts. For the period from June 1, 1945, to April 16, 1946, the Company purchased for use in the Elkins plant raw materials valued in excess of \$25,000, approximately 50 percent of which represented shipments to the Elkins plant from points outside the State of West Virginia. During the same period, the Company manufactured products at the Elkins plant amounting in value to over \$35,000, about 95 percent of which represented shipments to points outside the State.

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

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees.

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

The Union seeks a unit of all production and maintenance employees, including watchmen,² inspector-trimmers, and regular part-time employees,³ but excluding office and clerical employees, floorladies, foremen, and all other supervisory employees. The Company takes no position in the matter.

We find, on the basis of the entire record and all the circumstances of the case, that all production and maintenance employees of the Company at the Elkins plant, including watchmen, inspector-trimmers, and regular part-time employees, but excluding office and clerical employees, floorladies, 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.

² The duties of the watchmen are custodial and not monitorial, and there is no evidence in the record that they are militarized or deputized.

³ This includes two high school students who have been working 2 to 5 hours each day since December 1945, at regular production work.

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 employees in the appropriate unit who were employed during the pay-roll 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, 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 MacLaren Sportswear Corp., Elkins, West Virginia, 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 Sixth 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 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 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 or not they desire to be represented by District 50, United Mine Workers of America, A. F. of L., for the purposes of collective bargaining.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.