In the Matter of MANDEL BROTHERS, INC. *and* DEPARTMENT STORE EMPLOYEES UNION, LOCAL 291, OF THE BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, A. F. OF L.

Case No. 13-C-3193.—Decided May 10, 1948

Mr. Joseph L. Hektoen, for the Board.

Taylor, Miller, Busch & Boyden, by *Mr. Charles Sprowl*, of Chicago, Ill., for the respondent.

Mr. Daniel D. Carmell, by *Messrs. Joseph Gubbins* and *Walter A. Deans*, of Chicago, Ill., for the Union.

DECISION

AND

ORDER

On June 20, 1947, Trial Examiner T. B. Smoot issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief.

In view of our decision, as hereinafter set forth, we hereby deny the respondent's request for oral argument.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and finds merit in the respondent's exceptions.

In his Intermediate Report, the Trial Examiner found, as alleged in the complaint, that the respondent refused to bargain collectively with the Union on behalf of a unit consisting of all employees in the men's and boys' alteration department, being Section 907 of its retail store, including pressers, fitters, tailors, and machine operators, but excluding the stock clerk, the clerical employees, and all supervisory employees.

In a prior representation proceeding[1] the Board had rejected the respondent's contentions that a store-wide unit was appropriate and that Section 907 was inappropriate because it excluded the same type of employees who did similar work in other sections of the store, particularly the women's alteration department, Section 902, and had determined that the employees in Section 907 constituted a unit appropriate for collective bargaining.

The record in the representation proceeding established that the respondent's business and labor policies are centralized, that the functions of the various departments in its store are interdependent, and that working conditions, vacations, and employee benefits and privileges are generally the same for all the store's personnel. However, the Board found that the employees in Section 907 are generally considered as belonging to a skilled trade whose duties and interests are different from those of the sales clerks and other clerical employees who normally constitute a major part of a department store's personnel. The Board also found that, although considerable similarity existed between the work done in the women's alteration department and the men's alteration department, there was no substantial interchange between the two departments and that, historically, a sharp demarcation existed between the trades involved.

The Board concluded that "inasmuch as the employees in the men's alteration department are a highly skilled and clearly identifiable group, and no other union has succeeded in organizing them on a broader basis, we find, in accordance with our usual practice in such cases, that they may constitute an appropriate unit."[2]

Because of the subsequent passage of the Labor Management Relations Act, 1947, we are now precluded from finding such a unit to be appropriate under comparable circumstances. It is apparent that the Board established a separate bargaining unit on behalf of the employees in Section 907, in part, because no other union had succeeded in organizing the respondent's employees on a broader basis. While the extent of employee organization is still one of the factors to be weighed in determining the appropriateness of a unit, we conclude that the extent of employee organization would actually be the controlling justification for finding that the unit sought here by the Union is appropriate. The Act, as amended, provides, however, that the extent to which the employees have organized shall not be controlling.[3]

[1] *Matter of Mandel Brothers, Inc.*, 72 N. L. R. B. 859.

[2] The ultimate objective of the Union has not been limited to skilled workers on men's clothing. The Union has engaged in organizing the respondent's employees on a store-wide basis and has contracts with other department stores on that basis.

[3] Labor Management Relations Act, 1947, Section 9 (c) (5).

We, therefore, find that the unit sought by the Union is now inappropriate and that it would not effectuate the policies of the Act, as amended, to require the respondent to bargain with the Union on behalf of such a unit. Accordingly, we shall dismiss the complaint.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein against Mandel Brothers, Inc., Chicago, Illinois, be, and it hereby is, dismissed.

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

INTERMEDIATE REPORT

Mr Joseph L Hektoen, for the Board.

Taylor, Miller, Busch & Boyden by *Mr. Charles R. Sprowl*, of Chicago, Ill , for the respondent.

Mr. Daniel D Carmell, by *Messrs Joseph Gubbins* and *Walter A. Deans*, of Chicago, Ill., for the Union.

STATEMENT OF THE CASE

Upon charges duly filed by Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A. F of L. herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated May 14, 1947, against Mandel Brothers, Inc , Chicago, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act Copies of the complaint accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance, that the respondent on or about April 9, 1947, and at all times thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on March 12, 1947, had designated and selected the Union as their representative for the purpose of collective bargaining, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter, the respondent filed its answer, in which in substance, it admitted that it had refused to bargain with the Union. Respondent also admitted certain other allegations in the complaint but denied that its acts constituted an unfair labor practice.

Pursuant to notice a hearing was held in Chicago, Illinois, on June 2, 1947, before the undersigned, T. B. Smoot, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were repre-

sented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

No witnesses were called to testify, the case being submitted on the pleadings and the nine exhibits offered in evidence by the Board and admitted by the undersigned without objection. At the conclusion of the hearing a motion by Board's counsel to conform the pleadings to the proof with respect to formal matters was granted by the Trial Examiner without objection.

The parties waived oral argument. Opportunity was afforded the parties to file briefs and a brief has been received from respondent.

Upon the entire record of the case the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Mandel Brothers, Inc., a Delaware corporation, operates a retail department store in Chicago, Illinois. Respondent annually purchases merchandise for retail at its store valued in excess of $5,000,000, of which approximately 85 per cent was obtained from points outside the State of Illinois. Respondent's annual sales exceed $18,000,000, of which less than 5 percent is shipped to purchasers outside the State of Illinois.

The undersigned finds that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A. F. of L., is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1 The appropriate unit and representation by the Union of a majority therein

On February 10, 1947, the Board issued its Decision and Direction of Election in the *Matter of Mandel Brothers, Inc.*, and *Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A. F. L.*, Case No. 13-R-3816, finding that all the employees in the men's and boys' alteration department, including pressers, fitters, tailors, machine operators, but excluding the stock clerk, the clerical employee, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On March 12, 1947, pursuant to said direction of election, an election by secret ballot was conducted by the Board. On March 26, 1947, the Board certified the Union as the exclusive representative for the purposes of collective bargaining, of the employees in the unit hereinabove described.

The respondent contends, as it did at the representation proceeding, that the unit as found by the Board was not an appropriate unit. This contention was considered by the Board in the previous representation proceeding and was resolved against the views of respondent No new evidence was presented at this hearing which would bear upon this issue. Accordingly the undersigned

sees no reason to examine this contention or the evidence in the representation proceeding *de novo* and it is found, in accordance with the Board's finding in the previous representation proceeding, that all the employees in the men's and boys' alteration department including pressers, fitters, tailors, machine operators; but excluding the stock clerk, the clerical employee, and all 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.

The undersigned further finds that on March 26, 1947, and at all times thereafter, the Union was the duly designated representative of the majority of the employees in the aforesaid appropriate unit.

2. The refusal to bargain

On April 8, 1947, the Union, by letter, requested respondent to set a date for a bargaining conference. Respondent did not answer this letter. On April 16, 1947, the Union filed a charge with the Board alleging respondent refused to bargain with it and respondent was so advised by a field examiner of the Board in a letter of the same date. On April 25, 1947, the respondent, by letter, advised the Board that it contended that it was not engaged in interstate commerce and that the unit found appropriate by the Board in the previous representation proceeding was not appropriate and then stated, "We have, accordingly, refused to bargain with the charging union" Respondent in its answer and at the hearing herein admitted refusing to bargain on the grounds set forth in the letter of April 25, 1947. The undersigned therefore finds that on or about April 9, 1947, respondent refused to bargain collectively with the Union and has ever since that date refused to bargain collectively with the Union within the meaning of Section 8 (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because of the basis of the respondent's refusal to bargain as indicated in the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from the unfair labor practices found and from any other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees as exclusive bargaining agent in the unit herein found appropriate.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All the respondent's employees in the men's and boys' alteration department including pressers, fitters, tailors, machine operators, but excluding the stock clerk, the clerical employee, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3 Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A F of L., was at all times material herein and now is the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4 By refusing to bargain collectively with the aforesaid union on or about April 9, 1947, and at all times thereafter as the exclusive representative of the employees in the above-described unit the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By the above acts, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the respondent, Mandel Brothers, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A. F. of L., as the exclusive representative of all employees at the Chicago store in the men's and boys' alteration department including pressers, fitters, tailors, machine operators, but excluding the stock clerk, the clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) In any manner interfering with the efforts of Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A. F. of L, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Department Store Employees Union, Local 291, of the Building Service Employees' International Union, A F. of L, as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a written signed agreement;

(b) Post at its store in Chicago, Illinois, copies of the notice attached hereto and marked "Appendix A" Copies of such notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by an authorized representative of the respondent, be posted by respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the date of this Intermediate Report, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203 38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

T. B. SMOOT,
Trial Examiner.

Dated June 20, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request with Department Store Employees Union, Local 291, of the Building Service Employees' International

Union, A. F. of L., as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All employees at the Chicago store in the men's and boys'-alteration department including pressers, fitters, tailors, machine operators, but excluding the stock clerk, the clerical employees, and all supervisory employees.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain with us or refuse to bargain with said Union as the exclusive representative of all our employees in the aforesaid appropriate unit.

MANDEL BROTHERS, INC.,
Employer.

By_____
(Representative) (Title)

Dated_____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.