

In the Matter of MAY KNITTING COMPANY, INC. and UNITED WHOLESALE AND WAREHOUSE EMPLOYEES OF NEW YORK, LOCAL NO. 65, CIO

Case No. R-1054.—Decided November 17, 1938

Infants' Knitwear Manufacturing Industry—Investigation of Representatives: controversy concerning representation: stipulation as to—*Unit Appropriate for Collective Bargaining:* all inside employees, exclusive of supervisory employees; controversy as to inclusion of "hand-made" department; controversy as to supervisory employees—*Representative:* proof of choice: introduction of union membership cards in evidence; testimony of employees that they no longer wish to be represented by union; effect of such testimony—*Election Ordered*

Mr. Richard J. Hickey, for the Board.

Mr. Harold Rogers Lhove, of New York City, for the Company.

Mr. Harry Sacher, of New York City, for the United Wholesale and Warehouse Employees of New York, Local No. 65, C. I. O.

Miss Margaret Holmes, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 23, 1938, United Wholesale and Warehouse Employees of New York, Local No. 65, herein called the Union, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the May Knitting Company, Inc., of New York City, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 14, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On September 22, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union.

9 N. L. R. B., No. 88.

Pursuant to notice, a hearing was held on October 3, 1938, at New York City before James C. Paradise, the Trial Examiner duly designated by the Board. At the hearing the Company moved to dismiss the petition upon the ground that it failed to set forth the nature of the question concerning representation alleged to have arisen, as required by Article III, Section 2 (d), of said Rules and Regulations. Thereafter, by consent of the parties, the petition was amended to allege that a question has arisen concerning representation of employees of the Company in that the Company has refused to recognize the Union as the representative of said employees for the purposes of collective bargaining, although the Union has been designated by a majority of said employees as such representative. Thereupon the Company withdrew its motion to dismiss the petition; and thereupon, also, the Trial Examiner granted the Company's request for a continuance of the hearing.

Pursuant to the continuance, the hearing was resumed on October 6, 1938, at New York City, before James C. Paradise, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

May Knitting Company, Inc., is a New York corporation engaged in the manufacture and sale of infants' knitwear, having its principal office and Broadway plant at 1359 Broadway, New York City. It also has two manufacturing plants in Brooklyn, New York, neither of which is involved in this proceeding.

The Company's annual sales amount to about \$750,000 in value. Approximately 75 per cent of its finished products are sold and shipped outside New York. During the first 6 months of 1938, the Company purchased raw materials amounting to about \$200,000 in value, 25 per cent of which were received from points outside New York. Over 10 per cent of the Company's products are manufactured by home workers located in States adjacent to New York, who receive raw materials from and return the garments to the Broadway plant.

The Company employs about 42 persons at its Broadway plant.

II. THE ORGANIZATION INVOLVED

The United Wholesale and Warehouse Employees of New York, Local No. 65, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all inside employees of the Company at its Broadway plant exclusive of supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing all the parties stipulated that the Company had stated that it would not deal with the Union as collective bargaining representative of its employees, unless the Union were so chosen in an election held among said employees. On the basis of the stipulation, we find that a question has arisen concerning representation of employees of the Company at its Broadway plant.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Union contends that all inside employees of the Company at its Broadway plant, exclusive of supervisory employees, constitute an appropriate unit. It is the Company's position, however, that the approximately 13 employees in the "hand-made" department are engaged in a manufacturing process distinct from the work of its other employees and for that reason should not be included in the unit. There is no serious dispute that one Mrs. Bader, listed as a hand-made employee, should be excluded from the bargaining unit since for the most part she does piece work outside the plant.

The Broadway plant, including offices, stockroom, hand-made and shipping departments, is the general receiving and distributing base of the Company. From the hand-made department, yarn is sent to farm women in adjacent States for knitting into garments. After knitting, these hand-made products are returned for inspection and finishing in the hand-made department. The finishing work, performed by seven or eight menders and trimmers, consists of putting on ribbon, sewing holes, steaming and pressing garments. No actual knitting is done. There are several employees in the hand-made de-

partment who pack goods in addition to mending and trimming, while one or two clerical employees do no work of any sort on the garments. No distinction between the hand-made and other departments is made in regard to working conditions or rates of pay, and no labor organization, other than the Union, has solicited membership among the hand-made department employees. We see no reason in the record for placing employees in the hand-made department in a class separate from employees in other departments in the plant.

Aside from the controversy concerning the inclusion of the hand-made department within the unit, a question arose at the hearing as to four employees claimed by the Union to perform supervisory functions. The Company, on the other hand, contends that none of these four has supervisory powers, which are enjoyed only by its president and secretary-treasurer.

One of the four employees, Kitty Holdner, has her own desk and stenographer in the hand-made department. She supervises knitting done outside the plant, selecting yarn to be sent to home workers, inspecting the garments they make up, and notifying them of defects in their work. No other employee in the plant deals with the home workers.

Murray Pincus, general office manager, is another employee claimed by the Company to perform no supervisory functions. Pincus handles correspondence concerning orders, keeps the company books, and disciplines all employees at the direction of company officials. His salary is three times as great as that of the highest paid employee within the unit sought by the Union.

It was likewise contended by the Company that Harry Laiden, the order clerk, and Reno Parmegiani, the shipping clerk, exercise no supervisory powers. Laiden distributes orders to the order pickers, for the proper filling of which he is responsible. The order pickers consult him in regard to the details of their work, such as making substitutions whenever the merchandise requested is not in stock. Parmegiani directs the work of the several packers and clerical employees in the shipping department. He checks freight routes, furnishes shipping directions, and orders supplies for his department. Both Laiden and Parmegiani receive salaries approximately twice as great as the average employee in their departments.

The president and secretary-treasurer of the Company sell merchandise in the showroom. They spend very little time in the other departments of the plant, which are supervised by the four individuals whom we have discussed.

We find that Kitty Holdner, Murray Pincus, Harry Laiden, and Reno Parmegiani are supervisory employees and should be excluded from the bargaining unit.

The Company claimed that if the foregoing four persons were deemed supervisory employees, one Harry Schlossberg should be excluded from the unit for the same reason. Schlossberg, one of the original organizers of the Union, works in the receiving department, taking his orders from Laiden. He receives a salary comparable to that of the order pickers who work under Laiden. We conclude that Schlossberg's inclusion in the bargaining unit is proper.

We find, therefore, that all inside employees of the Company at its Broadway plant, exclusive of supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATION

There was introduced in evidence the Company's pay roll of September 30, 1938, showing the names of 37 employees within the appropriate unit. The Union submitted in evidence signed membership cards of 21 of such 37 employees. The signatures on the cards were identified by the business agent and financial secretary of the Union.

The Company thereupon put 10 of such 21 employees upon the witness stand, 8 of whom testified that they no longer wished the Union to represent them for the purposes of collective bargaining. We are inclined to question the probative value of testimony concerning preferences in union affiliation adduced in the presence and at the instance of the employer, but in the absence of other showing of coercion this evidence casts some doubt on the Union's claim of majority representation.

We therefore find that the question concerning representation that has arisen at the Company's Broadway plant can best be resolved by the holding of an election by secret ballot to determine whether the employees wish the Union to represent them. Those employees of the Company in the appropriate unit who were employed during the pay-roll period of September 30, 1938, shall be eligible to vote, except such as have since quit or have been discharged for cause.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of May Knitting Company, Inc., New York City, at its Broadway plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All inside employees of the Broadway plant, exclusive of supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, an election by secret ballot shall be conducted within a period of fifteen (15) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all inside employees of the May Knitting Company at the Broadway plant, who were on the pay roll as of September 30, 1938, exclusive of supervisory employees and those who have since quit or have been discharged for cause, to determine whether or not they desire to be represented by the United Wholesale and Warehouse Employees of New York, Local No. 65, for the purposes of collective bargaining.