

Austreng is guaranteed a 52-hour week and is the highest paid warehouse employee. But for Austreng, the Employer's president and his assistant would exercise the only supervision over the warehouse's day-to-day operations.

Upon the entire record, we find, as did the hearing officer, that Austreng responsibly directs the work of the warehouse employees and that he is a supervisor within the meaning of the Act. We conclude that Austreng was ineligible to vote in the election and we hereby sustain the challenge to his ballot, as recommended by the hearing officer.

As the Petitioner has received a majority of the votes cast in the election, we shall certify it as representative of the employees in the appropriate unit.

[The Board certified General Drivers & Warehouse Employees, Local 581, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America as the designated collective bargaining representative of the employees in the unit found appropriate.]

CHAIRMAN LEEDOM and MEMBER FANNING took no part in the consideration of the above Second Supplemental Decision and Certification of Representatives.

John St. George, d/b/a Michele Frocks,* Petitioner and Local No. 109, International Ladies' Garment Workers' Union, AFL-CIO

John St. George, d/b/a Michele Frocks and Michele Employees Independent Union, Petitioner. Cases Nos 4-RM-290 and 4-RC-3658 October 10, 1958

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, and thereafter consolidated, a hearing was held before Bernard Samoff, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

*On December 5, 1958, the Board granted the Petitioner's motion to amend the above Decision, Order, and Direction of Election by striking therefrom the name "John St. George, d/b/a Michele Frocks" and substituting therefor the name "James Patti, d/b/a Michele Frocks" wherever it appears therein.

The Board denied the motion to vacate or suspend the Decision, Order, and Direction of Election filed by the Intervenor on October 16, 1958.

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. A 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.
4. The petitions here concern units in the women's garment industry. The Employer operates 2 plants known as Michele Frocks, one at 210 North Main Street in Scranton, and one approximately 12 miles away at 601 Washington Avenue in Jermyn, Pennsylvania. It requests a two-plant unit for the employees of these plants. The petitioning Union requests a unit limited to the Michele employees in Scranton. At the hearing both the Employer and the petitioning Union stated a willingness to accept the unit sought by the other.

Local 109 of the ILGWU was named in both petitions as claiming recognition for the employees concerned, and participated fully in the hearing. It contends that John St. George, doing business as Michele Frocks, is not a separate Employer but that his operations are related to his function as manager for production and in charge of labor relations for Harvic Sportswear at its plant on Capouse Avenue in Scranton. It also urges that the minimum appropriate unit for the employees in question should include—in addition to the Michele employees in Scranton and Jermyn—the Harvic employees on Capouse Avenue in Scranton.¹

The Harvic employees have been covered in a multiemployer bargaining unit under a contract between the Pennsylvania Garment Manufacturers Association (also referred to in the record as Pennsylvania Dress Manufacturers Association), of which St. George is a director, and the Northeast Division of the ILGWU, covering "shops of all present and future members." This contract expired early in 1958. It provides that no work was to be subcontracted except to union shops. The Michele plants, which started operating during the effective period of this contract, have not been organized, and St. George testified that they have at times been used to subcontract Harvic work. An offer of proof that St. George had acquiesced in Intervenor's claim that the contract covered the Michele plants, but had requested time within which to bring them under it, was refused by the hearing officer.² Since March 1958 the Intervenor has picketed

¹The employees of an additional Harvic plant in Luzerne County, Pennsylvania, are also represented by the ILGWU. How the operation of this plant relates to the operation of the Harvic Scranton plant was not developed at the hearing.

²On the basis of this alleged contractual interest, however, the hearing officer permitted the ILGWU to intervene specifically in Case No. 4-RC-3658 near the close of the hearing, over objection of the Petitioner in that case.

the Michele plants with signs saying that the plant is on strike or that "Mama is on strike." Apparently the picket signs have not used the Michele name. Whether they have used the Harvic name does not appear. A representation petition filed by the Pennsylvania Garment Manufacturers Association is now pending before the Board³ in which the employer group seeks an associationwide unit, including some 265 plants or companies of which Harvic is one.

Testimony at the hearing indicated that the Scranton Michele plant was employing approximately 17,⁴ and the Jermyn plant approximately 7.⁵ Harvic Sportswear's plant in Scranton was not operating at the time of hearing.

Each of the Michele plants has separate supervision. Ordinarily each finishes its own work. On occasion, however, personnel may be moved from one plant to the other, as well as garments or parts of garments—whatever is necessary to complete work and make shipment. St. George does the purchasing for both plants, but hiring is done by local supervision. Shipments are made from both plants. Selling is done through a jobber. Payroll records are kept at the Scranton plant for Michele employees, but testimony indicates that additional payroll records are kept there which are not limited to Michele employees. At least one Michele employee was paid with Harvic checks and a Harvic employee has in the past made out the checks for Michele employees.

The petitioning Union elicited testimony of St. George that the Scranton Michele plant, whose employees it was specifically organized to represent, are mostly married women and are given the option of working hours selected by them during the daily period the plant is open from 7 a. m. until 10 p. m. Thus they are allowed to adjust their working time to their family needs. Whether this is also true of the Jermyn employees, or of the Harvic Scranton employees, does not appear. Apparently there is little employee contact between the Scranton Michele and Jermyn plants, for the employee who is president of the petitioning Union testified that she knew none of the employees at Jermyn and did not know what kind of work was performed there.

The record shows that Harvic makes no complete garments but that the Michele plants do. Harvic employees have sewn part of garments finished at Michele. There is also testimony that subcontracting sections of a garment, and the interchange of personnel to help out other contractors, is characteristic of the garment industry as a whole.

³ Case No. 4-RM-267 (unpublished).

⁴ Attorney for the petitioning Union, however, testified that his client was "a new union consisting of 28 employees out of a total of 36 now employed" at the Michele Scranton plant

⁵ Attorney for the Employer stated that the Jermyn plant operates "when it has work."

Concerning this testimony Intervenor admits in its brief that it "would be the last to suggest" that such practice is "confined to Michele and Harvic plants."

Intervenor introduced evidence tending to cast doubt upon St. George's proprietary interest in the Michele plants, including St. George's testimony that he is using a Harvic truck as well as Harvic machinery for which he has no bill of sale, that he has no "visible" leasing arrangement or indication of ownership or right to possession of the Michele premises; although he claims to pay rent; that the Pennsylvania fictitious business name registration for Michele in Scranton was taken out in January 1958, rather than a year or more earlier when St. George claims to have established the plant; that this certificate lists as Michele's address the Harvic address on Capouse Avenue rather than the Michele address on Main Street, 3 miles away; that the Michele premises at Jermyn carried no identifying sign at the time of hearing but carried a "Ronnie Dee" sign before that time, and that "Ronnie Dee" was registered by another person at the Jermyn location in 1957, and that no registration for operation at that location by St. George as "Michele" appears in the Pennsylvania records although St. George claims to have bought from a purchaser of the earlier registrant "approximately 1 year" before hearing.

The ILGWU would dismiss both petitions as requesting inappropriate units in the light of established bargaining history. It claims that the Michele plants have been "subject to" the collective-bargaining agreement between it and the Pennsylvania Garment Manufacturers Association recently expired. On the record, however, it is clear that whatever contract claims the ILGWU may have made concerning the Michele plants and whatever St. George's response may have been, Michele employees have not, in fact, been bargained for. It is also clear that, although the ILGWU has attempted to do so, it has not established here that St. George doing business as Michele Frocks, and Harvic Sportswear, together constitute a single employer. In these circumstances we find that there is no history of bargaining on a broader basis affecting the Michele employees such as to preclude a finding that they themselves constitute an appropriate unit,⁶ either on a two-plant basis as requested by the Employer or on the single plant at Scranton basis as requested by the Independent. We would not, therefore, dismiss the petitions on the grounds urged by the ILGWU.

Concerning now the unit appropriate for Michele employees alone, there are factors here which indicate that a two-plant unit would be feasible. These are the work similarity at the Scranton and the Jermyn

⁶ Compare *Thos. & Geo. M. Stone, Inc.*, 120 NLRB 480, where the operations of two of the employers in a multiemployer unit were found to be so integrated as to constitute them a single employer and their employees indistinguishable for unit purposes.

plants, the fact that there is some employee interchange, and the common overall management. However, there are other factors which we consider persuasive, which justify a finding that a unit confined to the Michele Scranton employees is appropriate. These are the separate locations of the plants some miles apart and the lack of community of interest between the two groups as testified to on the record, the separate immediate supervision and hiring which obtain at each plant, and the fact that each plant can operate autonomously. In view of these circumstances we are persuaded that the requested unit limited to the Michele employees at Scranton is appropriate.⁷ Although the Independent expressed willingness to represent the two-plant unit in the event the Board should find that unit appropriate, we do not construe that as a request for certification in separate plant units. We shall dismiss the Employer's petition for the two-plant unit.

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All operators employed by the Employer at its plant at 210 North Main Street, in Scranton, Pennsylvania, including pressers and trimmers, but excluding cutters, office clerical employees, the machinist, and all supervisory employees as defined in the Act.

[The Board dismissed the petition in Case No. 4-RM-290.]

[Text of Direction of Election omitted from publication.]

⁷ See *George Aftergood & Son d/b/a Calivogue Sportswear*, 96 NLRB 228; *Rose Marie Reid*, 103 NLRB 498.

Sealtest Southern Dairies Division, National Dairy Products Corporation¹ and Freight Drivers, Warehousemen, Helpers Bakery Salesmen and Dairy Employees Local 390, an affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 12-RC-329. October 10, 1958

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Herbert B. Mintz, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

¹ The name of the Employer appears as amended at the hearing.