

Wickly, Inc., Petitioner and Local 415, International Ladies' Garment Workers' Union, AFL-CIO. *Case No. 12-RM-31.*
May 10, 1961

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 N. Watterson, 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 [Chairman McCulloch and Members Leedom and Fanning].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved¹ claims to represent certain employees of the Employer.

3. The Union had a 3-year contract with the Florida Apparel Manufacturer's Association, herein called the Association, effective until August 31, 1960, and from year to year thereafter absent a 60-day notice. The Employer, which is engaged in the manufacture and sale of ladies' apparel, began operations in September 1959, with Corea, who had been employed by its predecessor, as production manager. On December 15, 1959, Corea and Belluso, a representative of the Union, signed a "Memo" containing certain wage and other provisions, and stating that it was "made part of the foregoing Agreement," and this document was introduced in evidence attached to a copy of the Association contract. The Union contends that the Employer thereby became a party to the contract, that the contract has automatically renewed, and that it constitutes a bar. The Employer contends that Corea had no authority to sign any binding agreement, that the provisions of the Association contract were not put into effect, and that it repudiated the contract as soon as the Employer's president was notified thereof.

Corea has never held a corporate office with the Employer and admitted at the hearing that he was never vested with authority to bind the Employer in a contract. At the time the "Memo" was signed, Corea had some expectation of becoming a corporate officer of the Employer. He informed Belluso of this expectation and of his lack of authority at the time of the signing. Corea also testified that he had not become a corporate officer and, further, that the designation

¹ The name of the Union appears as corrected at the hearing.

“Secretary and Treas.” following his signature on the “Memo” was not in his handwriting.

Sometime in April or May 1960, being pressed by Belluso for payment of dues as provided in the Association contract, Corea gave Belluso a personal check and began collecting dues from the employees. As a result, the contract came to the attention of the Employer’s president, who immediately informed Corea that he had no authority to bind the Employer to any agreement, notified the Union of Corea’s lack of such authority, and told the Union that it repudiated the contract.

Shortly thereafter an effort was made by Belluso to collect from Corea the amounts provided in the Association contract for the employee health and welfare fund. Without the knowledge of the Employer’s officers but with Corea’s permission, Belluso came to the plant office and, with the assistance of a clerical employee of the Employer, prepared a list of employee salaries for the purpose of computing the amounts owed to said fund. These computations were later made in the union office by one of its employees, and the Union requested that Corea pay the amount found to be due. When this request was conveyed to the president of the Employer by Corea, it was refused and such payment was never made.

The “Memo” provides that certain provisions of the Association contract were to become effective immediately while others were deferred until April 1, 1960. The Union claims that the terms of the contract were put into effect in the Employer’s plant at the times set forth in the “Memo,” but the Employer denies this. The record establishes that the Employer has for some time paid a higher minimum wage than that called for in the contract; and that, although some of the wage and hour provisions of the contract are in effect in the Employer’s plant, these conditions prevailed before the “Memo” was signed. There is testimony about a grievance or price committee at the Employer’s plant, but no evidence that it was constituted to handle grievances pursuant to the Association contract, and one of the committee members is a nonunion employee.

In or about September 1960, Belluso made several requests of the Employer for a contract containing a duly authorized signature, but all these requests were refused.

The Union introduced into evidence a copy of a letter dated May 18, 1960, requesting renegotiation of the contract, the original of which the Union claimed was written by its southeastern regional director and mailed to Corea. The Employer denied that it ever received such a letter. The Union’s regional director was not at the hearing.

It is clear, from the foregoing and the entire record, and we find, that Corea did not have the authority to execute a contract binding

upon the Employer. Corea and Belluso were aware of this at the time the "Memo" was signed. Moreover, the Employer's president, upon learning what Corea had done, promptly notified Corea and the Union that Corea lacked such authority and that the contract was repudiated, and therefore refused to permit any effect to be given to the contract. The Union's acknowledgement of the Employer's position that there was no properly executed contract is indicated by its efforts to obtain a duly authorized signature of the Employer. We therefore find there is no contract bar.² Accordingly, the Union's request for a new contract raises a question concerning representation which the Employer is entitled to have resolved by an election.³

Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The parties were in agreement as to the appropriate unit except with regard to the shipping clerk, whom the Employer would include but the Union would exclude. The shipping clerk, who performs the usual duties of that classification, also regularly helps other employees who are in the unit, and works under the same supervision as they do. In view of the employment interests he shares with the employees in the unit, we shall include him.⁴

Accordingly, 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 cutters, machine operators, pressers, finishers, drapers, examiners-cleaners, special machine operators, floor girls, sample hands, bundle girls or assorters, and the shipping clerk at the Employer's Miami, Florida, plant, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

5. The Employer's business, during the year it has operated, has fluctuated from about 50 to 2 or 3 employees, according to the receipt of orders. At the time of the hearing in November 1960, the Employer had a complement of 12, which it anticipated increasing to about 20 over the next 6 months. It maintained at the hearing, however, and so informed the laid-off employees who applied for reinstatement, that most of them had no reasonable expectancy of re-employment. Accordingly, we find that the laid-off employees who have not been recalled are not eligible to vote.⁵

[Text of Direction of Election omitted from publication.]

² *Herrall-Owens Co.*, 92 NLRB 160; *Fruehauf Traller Company*, 87 NLRB 589.

³ *The Mastic Tile Corporation of America*, 122 NLRB 1528, 1529.

⁴ *Bergen Knitting Mills, Inc.*, 122 NLRB 801.

⁵ *Northwest Plastics, Inc.*, 121 NLRB 815, 816.