

In the Matter of SHEBA ANN FROCKS, INC. and INTERNATIONAL LADIES' GARMENT WORKERS' UNION OF AMERICA, LOCALS 121 AND 204.

Case No. R-154.—Decided July 23, 1937

Dress Manufacturing Industry—Strike—Investigation of Representatives: controversy concerning representation of employees—refusal by employer to recognize and negotiate with union as exclusive representative—question affecting commerce: current strike—*Unit Appropriate for Collective Bargaining:* production employees; eligibility for membership in only organization among employees; functional coherence; history of collective bargaining relations in industry—*Representatives:* proof of choice: statements designating—*Certification of Representatives:* after investigation but without election.

Mr. Karl H. Mueller for the Board.

Mr. Emil Corenbleth, of Dallas, Tex., for the Company.

Mr. Jim Guthrie and *Mr. Jack Johannes*, of Dallas, Tex., for the Union.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF CASE

On April 24, 1937, International Ladies' Garment Workers' Union of America, Locals 121 and 204, herein collectively called the Union, filed with the Regional Director for the Sixteenth Region (Fort Worth, Texas), a petition alleging that a question affecting commerce had arisen concerning the representation of the production employees of Sheba Ann Frocks, Inc., Dallas, Texas, 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 May 3, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to a notice of hearing duly issued and served by the Regional Director, a hearing was held in Dallas, Texas, commencing on May 27, 1937, before Emmett P. Delaney, the Trial Examiner duly designated by the Board.¹ At the hearing, the Board, the Company, and the Union were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issue was afforded to all parties. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petition filed by the Union, 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

Sheba Ann Frocks, Inc., was incorporated in Texas by its president, Jack Ginsburg, in January 1935, and since that date has maintained its place of business in Dallas, Texas, where it manufactures ladies' silk, cotton, rayon, and woolen dresses. In addition, the Company engages in contracting or furnishing labor to other dress manufacturers in Dallas. Under such arrangements, these manufacturers furnish material, already cut, to the Company, which returns the finished dresses after having the material sewed by its employees. Ginsburg testified that during February and March, 1937, 98 per cent of the Company's business consisted of such contract work.

The Company's equipment consists of one cutting table, ten pressing irons, and about 52 machines, all located in one large room. On January 30, 1937, 59 persons were employed, consisting of seven pressers, 31 operators, three special operators, two cutters, eight finishers, two inspectors, two pinners, two errand boys, one designer, and one forelady. Plant operations are all carried on in the one room, the work of the various employees being highly coordinated.

In 1936, the gross volume of the Company's sales totaled \$68,799.40, of which \$21,200.70 represented shipments from Texas to Louisiana, Arkansas, Oklahoma, and other southwestern States, and \$20,997.12 represented contract work for other Dallas dress manufacturers.

¹By order of the Board dated May 11, 1937, this proceeding was consolidated for the purpose of hearing with a case predicated upon charges filed by the Union against the Company on April 19, 1937, alleging that the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1), (3), and (5) of the Act. The issues in this latter case are not considered in this Decision except in so far as they have bearing upon the issues here involved.

In the same year the Company purchased materials valued at \$18,519.87, of which 95 per cent were shipped from points outside the State.

Two of the manufacturers for whom the Company does contract work testified that over 90 per cent of the materials purchased by them and supplied to the Company are shipped from points outside the State. Between 65 and 70 per cent of the output of the Marcy Lee Manufacturing Company, which in 1936 supplied the Company with the greater part of its contract work, was shipped to some 25 States throughout the Country. It was estimated by the president of that company that an equal percentage of the dresses received from the Company was likewise shipped outside the State of Texas.

II. THE UNION

Locals 121 and 204 of the International Ladies' Garment Workers' Union of America are labor organizations. Local 121 limits its membership to production workers, exclusive of supervisory employees, shipping clerks, and cutters employed in the manufacture of the types of dresses produced by the Company, and Local 204 limits its membership to cutters employed in similar manufacturing. Both locals have instituted the proceedings as a unit through the International Ladies' Garment Workers' Union of America.

III. QUESTION CONCERNING REPRESENTATION

The Union contends that on January 30, 1937, John Ratekin, manager of the locals, requested Ginsburg to negotiate with him as the representative of the production employees. The Company maintains that such request was never made. In any event, the evidence shows that following the lay-off of many employees during the first week of February, a strike was called on February 11, 1937, which, at the time of the hearing, was still in progress.

The record indicates that during the month of January 1937, 32 of the Company's production employees had signed cards authorizing the Union to represent them for the purposes of collective bargaining with the Company, and that the strike was called by the Union as such representative. We find that a question has arisen concerning the representation of the Company's production employees.

IV. THE APPROPRIATE UNIT

On January 30, 1937, the Company had in its employ 59 employees, of whom 58 were eligible for membership in the Union.² Those

² Board's Exhibit No 4, the Company's pay roll, lists only 58 employees. However, Ginsburg testified that Mae Maxwell, a finisher whose name does not appear on the pay roll, was also employed at that time.

eligible for membership consisted of seven pressers, 31 operators; three special operators, two cutters, eight finishers, two inspectors, two pinners, one designer, and two errand boys.³ With few exceptions all of these employees worked 44 hours a week, were paid on a piece-work basis, and averaged between 10 and 11 dollars per week.

As we have indicated, the cutters, operators, pressers, and finishers, in which classifications all of the Company's production employees enumerated above are included, all work in the same room of the plant, the operations of each being coordinated with the operations of the others. The evidence discloses that the Union always negotiates for these four classifications, exclusive of office workers, designers, and shipping clerks, as a single unit for the purpose of collective bargaining with other manufacturers in the same industry.

The Company contends that each classification constitutes an appropriate unit, but in the light of the evidence, we cannot consider this contention tenable. The Company further maintains that its business is seasonal and that the number of workers who are employed throughout the year does not exceed 25. Ginsburg testified that he does not consider a worker a regular employee unless such worker has been employed by the Company for a period of not less than 90 days. However, both he and Thelma Boone, the forelady, admitted that the Company keeps no records of the length of time each worker is employed. The evidence indicates that except for a haphazard system of giving employment on a seniority basis, the Company makes no distinction between its "extra" and regular employees. The inference is inescapable that the Company formulated this arbitrary classification of workers solely for the purpose of attempting to controvert the evidence that the majority of its employees had designated the Union as their representative.

As we stated above, 32 of the Company's production employees had signed cards authorizing the Union to represent them for the purpose of collective bargaining with the Company. These cards were introduced in evidence, and full opportunity for cross-examination with respect to their authenticity was afforded the Company.

In order to insure to the Company's employees the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that the production employees of the Company, exclusive of supervisory employees, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the Union, having been selected by a majority of the employees in such unit as of January 30, 1937, as their representative for such purposes, is, by

³ The record indicates that the errand boys also aided in the production operations of the plant and were therefore eligible for membership in Local 121.

virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all of the production employees of the Company, except supervisory employees, and we will so certify it.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

In 1935, the Union called a general strike against all of the Dallas dress manufacturers, in which 90 per cent of the employees participated. The strike, which was called for the purpose of organizing Dallas employees, lasted for approximately ten months, and although only three of the Company's employees went out on strike, the plant was picketed and the Company's business was adversely affected.

The strike now in progress has been accompanied by picketing and has greatly curtailed production. Ginsburg testified that the output of the Company has been reduced by two-thirds by reason of union activity.

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 has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the production employees of Sheba Ann Frocks, Inc., within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The production employees, exclusive of supervisory employees, employed by Sheba Ann Frocks, Inc., constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Locals 121 and 204, International Ladies' Garment Workers' Union of America, having been designated by a majority of the production employees of Sheba Ann Frocks, Inc., as their representatives for the purposes of collective bargaining, are, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representatives of all such production employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

CERTIFICATION OF REPRESENTATIVES

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 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Locals 121 and 204, International Ladies' Garment Workers' Union of America, have been designated by a majority of the production employees, exclusive of supervisory employees, of Sheba Ann Frocks, Inc., as their representatives for the purposes of collective bargaining with Sheba Ann Frocks, Inc., and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, Locals 121 and 204, International Ladies' Garment Workers' Union of America, are the exclusive representatives of all such production employees for the purposes of collective bargaining with Sheba Ann Frocks, Inc., in respect to rates of pay, wages, hours of employment, and other conditions of employment.