

IN the MATTERS of FEDERAL KNITTING MILLS COMPANY and BAMBERGER REINTHAL COMPANY *and* INTERNATIONAL LADIES' GARMENT WORKERS UNION

IN the MATTER of STONE KNITTING MILLS COMPANY *and* AMERICAN FEDERATION OF LABOR

Cases Nos. R-200, R-201, and R-202.—Decided August 7, 1937

Ladies Knit Goods Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority status—*Strikes:* caused by attempt of employers to coerce employees into joining a particular organization—*Unit Appropriate for Collective Bargaining:* eligibility for membership in both rival organizations—*Election Ordered:* prior collective agreements no bar to holding—*Certification of Representatives.*

Mr. Harry L. Lodish and Mr. Peter DiLeone for the Board.

Mr. Wells K. Stanley, Mr. Fred Frankel, and Mr. Phillip Frankel, of Cleveland, Ohio, for the Companies.

Mr. William J. Corrigan and Mr. Joseph B. Corrigan, of Cleveland, Ohio, for the Union.

Mr. John H. Orgill, of Cleveland, Ohio, for the Federation.

Mr. Julius Schlezinger, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

On June 15, 1937, the International Ladies' Garment Workers Union, herein called the Union, filed petitions with the Regional Director for the Eighth Region (Cleveland, Ohio), alleging that questions affecting commerce had arisen concerning the production employees of the Bamberger Reinthal Company and the Federal Knitting Mills Company, both of Cleveland, Ohio, and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 17, 1937, the American Federation of Labor, herein called the Federation, filed a similar petition with respect to the Stone Knitting Mills Company, also of Cleveland, Ohio. On July 1, 1937, the National Labor Relations Board, herein called the Board, issued an order consolidating the above cases for the purpose of hearing and authorizing the Regional Director for the

Eighth Region to conduct an investigation and provide a hearing in connection therewith. Notices of hearing were duly served on each of the parties.

Pursuant to the notices, a hearing was conducted by Irving G. McCann, the Trial Examiner duly designated by the Board, on July 15, 16, and 17, 1937, in Cleveland, Ohio, and testimony was taken. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The Board has reviewed the conduct of the hearing and hereby affirms all rulings of the Trial Examiner.

At the hearing the Trial Examiner granted the parties a 10-day extension of time in which to file their briefs and evidence concerning the claims of the Union and the Federation to represent a majority of the employees of the Bamberger Reintal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, herein referred to collectively as the Companies. Pursuant to this extension of time, briefs in behalf of all the parties and the applications by employees of the Companies for membership in the Union and the Federation were filed with the Board. Subsequently a supplemental brief and exceptions to the ruling of the Trial Examiner refusing to grant a further extension of time were filed by the Companies.

Upon the entire record in the cases the Board makes the following:

FINDINGS OF FACT

I. THE COMPANIES AND THEIR BUSINESSES

A. *Bamberger Reintal Company*

The Bamberger Reintal Company is an Ohio corporation with its principal office and place of business in Cleveland, Ohio. It is engaged in the manufacture of knitted outer wear. Its annual gross sales amount to \$1,033,294.66 and its purchases to \$397,733.19.

The company purchases approximately 75 per cent of its raw materials from outside the State of Ohio. Eighty-five per cent of its finished products are shipped to points without Ohio. About 80 per cent of these products are manufactured pursuant to special order. The company possesses a registered trademark for use in commerce among the several States.

B. *Federal Knitting Mills Company*

The Federal Knitting Mills Company is an Ohio corporation engaged in the business of manufacturing knit goods at Cleveland, Ohio. It also has a sales office in New York, New York. Its annual purchases amount to \$1,060,000 and its annual sales to \$2,100,000.

A substantial portion of the raw materials used by the company are received by it from points outside Ohio. Ninety per cent of its finished products are shipped without the State. Practically all of these products are made to special order. A trademark in the name of the Federal Knitting Mills Company is registered in the United States Patent Office for use in commerce among the several States.

C. Stone Knitting Mills Company

The Stone Knitting Mills Company, an Ohio corporation engaged in the business of manufacturing knitted outer wear, has its principal office and place of business in Cleveland, Ohio, and a branch office in New York, New York. Its purchases amount to about \$500,000 per year and its sales to about \$1,000,000.

Ninety-five per cent of the raw materials used by the company are purchased without the State of Ohio. Eighty-five per cent of its finished products are shipped to points outside Ohio. All of these products are manufactured pursuant to special order.

II. THE ORGANIZATIONS INVOLVED

A. The International Ladies' Garment Workers Union

The International Ladies' Garment Workers Union is a labor organization affiliated with the Committee for Industrial Organization. It admits as members workers in the ladies knitted goods industry. On June 16, 1937, it chartered Local No. 295 with jurisdiction over the employees in the knitted goods industry in Cleveland, Ohio.

B. The American Federation of Labor

The American Federation of Labor is a labor organization having among its members workers from almost all branches of American industry. On June 18, 1937, it chartered Federal Unions Nos. 20,865, 20,866, and 20,867 among the employees of the Stone Knitting Mills Company, the Federal Knitting Mills Company, and the Bamberger Reinthal Company, respectively.

III. THE APPROPRIATE BARGAINING UNITS

The Union and the Federation agreed at the hearing that the appropriate bargaining unit in each plant consists of all production and maintenance workers in such plant, excepting clerical and supervisory employees. We find that in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act, all of the production and maintenance workers, ex-

cepting clerical and supervisory employees, of the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, respectively, constitute units appropriate for the purposes of collective bargaining.

IV. QUESTIONS CONCERNING REPRESENTATION

Late in March 1937, a group of workers at the Bamberger Reinthal Company, dissatisfied with their pay and with working conditions at the plant, requested the International Ladies' Garment Workers Union to organize the employees of that company. The Union thereupon commenced an organization drive at the factory of that company. The following month similar drives were begun among the employees of the Federal Knitting Mills Company and the Stone Knitting Mills Company. On May 25, the Union wrote to the Federal Knitting Mills Company, and on June 3, to the other two companies, requesting conferences for the purpose of negotiating with respect to its members. No answer was received to any of these letters. The evidence indicates that by June 7, the Union had made considerable progress in organizing the employees of each of the Companies.

Late in April or early in May, 1937, the American Federation of Labor appointed a committee with Coleman Clarhaty as its chairman to organize the knit goods workers in Cleveland for the Federation. Clarhaty called upon Phillip Frankel, the secretary and attorney of The Knitted Outer Wear Manufacturers of Cleveland, a trade association to which the Companies belong, and urged upon him the advantages which a union contract with the Federation would bring to the members of such association. Frankel arranged several meetings between Clarhaty and officials of the Companies during the month of May. At one of these meetings the Companies agreed to throw open their plants to Federation organizers and to enter into a contract with the Federation if it succeeded in obtaining a majority of their employees as members. At the time of this agreement the Federation did not as yet have any members in such plants.

On June 7, 1937, the Companies admitted several Federation organizers into their factories. Telephone service at such factories was cut off and their doors blocked to prevent anyone from leaving. The workers in each plant were called together by their foremen and foreladies and addressed by a Federation organizer who advised them that it would be to their best interest to join the Federation. Application cards were passed out to the employees and it appears that a great many of them in each plant signed the cards and handed them in. It is important to note that at each plant either officers of

the company or supervisory employees were present at the meeting where the membership cards were distributed and filled out. At the plant of the Stone Knitting Mills Company, the Federation organizer was introduced by Mr. Woodworth, the secretary-treasurer of the company.

Following the meetings, employees who had not already signed cards were advised by their foremen and foreladies that the Companies wished them to join the Federation. Supervisory employees in each factory requested workers to sign Federation application cards. At the plant of the Bamberger Reinthal Company several workers who had not turned in cards at the meeting were called into the company office and, in the presence of their foreman, requested to join the Federation. At the plant of the Federal Knitting Mills Company the workers were forced to attend a meeting of the company union that same afternoon where the president of the company union stated that it was now against the law to have an inside union and that they should join the Federation instead.¹ Several witnesses testified that they had joined the Federation because they were afraid that they would lose their jobs if they refused to do so. It is clear that the Companies, in total disregard of the provisions of the Act, interfered with and coerced their employees in the exercise of their rights to self-organization, to join or assist labor organizations, and to choose representatives for the purpose of collective bargaining. This interference and coercion on the part of the Companies cast doubt upon the question of whether a majority of their employees had joined the Federation of their own free will.

In protest against these activities by the Companies the Union, on June 8, 11, and 14, called strikes in the plants of the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, respectively. All three plants were forced to close down. However, on June 30, the Stone Knitting mills Company succeeded in reopening its factory.² Subsequently, the other two plants also reopened. The members of the Union remained on strike, however, and at the hearing contended that very few employees had returned to work.

In the meantime the Federation and the Companies had continued their negotiations. On July 8, the members of the Federation approved, at a mass meeting, the provisions of an agreement which had been drawn up by Clarhatty and Frankel in May. These provisions were then incorporated into a written contract and signed by the Federation and the Companies on July 9. This contract pro-

¹ A company union had been organized at each factory during the period of the National Industrial Recovery Act

² The reopening was marked by a riot at which several persons were injured.

vided for recognition of the Federation as sole bargaining agent in each plant.³

The Federation contends that the contract entered into with the Companies on July 9 is a bar to an election. However, as pointed out above, the interference and coercion on the part of the Companies cast doubt upon the contention of the Federation that it had been freely designated as their representative by a majority of the employees at the time of the contract.

The Federation also contends that since the International Ladies' Garment Workers Union has only been suspended, and not expelled, from the American Federation of Labor the dispute which has arisen is an internal dispute within the body of the Federation, in which the Board should not intervene. We have already rejected a similar contention, however, in view of the fact that it is a matter of common knowledge that unions affiliated with the Committee for Industrial Organization have ceased to obey the orders of the Federation.⁴

We conclude that questions concerning representation have arisen which can best be settled by a secret ballot. Since the last day of normal operations in each plant was the last working day before the commencement of the present strike in such plant, those eligible to vote should be the employees as of that date.

V. THE EFFECT OF THE QUESTIONS OF REPRESENTATION ON COMMERCE

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

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. Questions affecting commerce have arisen concerning the representation of the production and maintenance workers, excepting clerical and supervisory employees, in the plants of the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, respectively, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

³The contract is a single agreement covering seven knit goods manufacturers. It does not contain any provision with respect to hours and wages but provides for the negotiation of individual contracts between the Union and the Companies regarding such matters

⁴*Matter of the Interlake Iron Corp. and Toledo Council, Committee for Industrial Organization*, Case No. R-149, decided June 26, 1937, 2 N. L. R. B. 1036

2. The production and maintenance workers, excepting clerical and supervisory employees, in the plants of the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, respectively, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

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

DIRECTED that, as part of the investigations authorized by the Board to ascertain representatives for collective bargaining with the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, elections by secret ballot shall be conducted within ten (10) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth 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 production and maintenance workers, excepting clerical and supervisory employees, who were employed in the Cleveland, Ohio, plants of the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, as of the last working day in such plants before June 8, 1937, June 11, 1937, and June 14, 1937, respectively, to determine whether they desire to be represented by the International Ladies' Garment Workers Union or the American Federation of Labor, for the purposes of collective bargaining.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Direction of Elections.

[SAME TITLES]

DECISION AND CERTIFICATION OF REPRESENTATIVES

September 3, 1937

On June 15, 1937, the International Ladies' Garment Workers Union, herein called the Union, filed petitions with the Regional Director for the Eighth Region (Cleveland, Ohio), alleging that questions affecting commerce had arisen concerning the production em-

ployees of the Bamberger Reinthal Company and the Federal Knitting Mills Company, both of Cleveland, Ohio, and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 17, 1937, the American Federation of Labor, herein called the Federation, filed a similar petition with respect to the Stone Knitting Mills Company, also of Cleveland, Ohio. On July 1, 1937, the National Labor Relations Board, herein called the Board, issued an order consolidating the above cases for the purpose of hearing and authorizing the Regional Director for the Eighth Region to conduct an investigation and provide a hearing in connection therewith. Pursuant to notice duly served on all the parties, a hearing was held on July 15, 16, and 17, 1937, at Cleveland, Ohio, before Irving G. McCann, the Trial Examiner duly designated by the Board.

On August 7, 1937, the Board issued a Decision and Direction of Elections in which it directed that elections be held among the production and maintenance workers, excepting clerical and supervisory employees, employed, respectively, by the Bamberger Reinthal Company, the Federal Knitting Mills Company, and the Stone Knitting Mills Company, herein referred to collectively as the Companies, to determine whether they wished to be represented by the Union or the Federation for the purposes of collective bargaining.

On August 20, 1937, the Regional Director for the Eighth Region, acting pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended, filed an Intermediate Report with respect to the elections held pursuant to the Direction of Elections. The Intermediate Report found the results of the elections to be as follows:

BAMBERGER REINTHAL COMPANY

Total number eligible to vote.....	290
Total number of ballots cast.....	293
Total number of ballots cast for Federation.....	132
Total number of ballots cast for Union.....	136
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged ballots (not counted).....	25

FEDERAL KNITTING MILLS COMPANY

Total number eligible to vote.....	487
Total number of ballots counted.....	479
Total number of ballots cast for Federation.....	149
Total number of ballots cast for Union.....	290
Total number of void ballots.....	1
Total number of blank ballots.....	3
Total number of challenged ballots.....	36

STONE KNITTING MILLS COMPANY

Total number of ballots counted.....	486
Total number of ballots cast for Federation.....	298
Total number of ballots cast for Union.....	148
Total number of void ballots.....	6
Total number of blank ballots.....	0
Total number of challenged ballots.....	34

Objections to the ballot and the Intermediate Report were thereafter filed by the Federation with respect to the election among the employees of the Bamberger Reinthal Company. No objections have been filed by any of the parties with respect to the other two Companies.

The Union, having been selected by a majority of the production and maintenance employees, excepting clerical and supervisory employees, of the Federal Knitting Mills Company, as their representative for the purposes of collective bargaining, is, by virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all such employees, and we will so certify it. Also, pursuant to Section 9 (a) of the Act, we will certify the Federation as the exclusive representative for the purposes of collective bargaining of all the production and maintenance employees, excepting clerical and supervisory employees, of the Stone Knitting Mills Company. No certification will be made with respect to the employees of the Bamberger Reinthal Company until a hearing is conducted on the objections to the ballot and the Intermediate Report which have been filed concerning the election among such employees.

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 International Ladies' Garment Workers Union has been selected by a majority of all the production and maintenance employees, excepting clerical and supervisory employees, of the Federal Knitting Mills Company as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, International Ladies' Garment Workers Union is the exclusive representative of all of such employees of the Federal Knitting Mills Company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

AND IT IS FURTHER CERTIFIED that the American Federation of Labor has been selected by a majority of all the production and maintenance employees, excepting clerical and supervisory employees, of the Stone Knitting Mills Company as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, the American Federation of Labor is the exclusive representative of all of such employees of the Stone Knitting Mills Company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Certification of Representatives.