

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

Case No. C-186.—Decided February 1, 1938

Dress Manufacturing Industry—Unit Appropriate for Collective Bargaining—Representatives: designated by Decision and Certification—*Discrimination:* discharges, following end of business season, held not discriminatory; charges dismissed—*Collective Bargaining:* previous refusal to negotiate with representatives of employees where request by representatives inadequate, held not to relieve employer from obligation to bargain upon subsequent union request; refusal to negotiate with representatives after certification by Board.

Mr. Karl H. Mueller and *Mr. L. N. W. Wells*, for the Board.

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

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

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges having been filed by International Ladies' Garment Workers' Union of America, Locals 121 and 204, herein collectively called the Union, the National Labor Relations Board, herein called the Board, by Edwin A. Elliott, Regional Director for the Sixteenth Region (Fort Worth, Texas), issued and duly served its complaint dated May 10, 1937, against Sheba Ann Frocks, Inc., Dallas, Texas, the respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 15, 1937, the respondent filed its answer to the complaint in which it denied that it had engaged in or was engaging in the unfair labor practices alleged therein. At the same time it filed a motion to dismiss the complaint.

Pursuant to notice served upon all the parties, a hearing was held in Dallas, Texas, from May 27 through May 31, 1937, before Emmett

¹ By order of the Board dated May 11, 1937, this proceeding was consolidated for the purposes of hearing with a proceeding brought pursuant to a petition filed by the Union requesting an investigation and certification of representatives

P. Delany, the Trial Examiner duly designated by the Board.¹ The Board, the respondent, and the Union were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.²

On June 9, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint, except that he recommended the dismissal of the complaint in so far as it alleged the discriminatory discharges of Martha Moody, Jewel Embrey, Lora Walker, Kathryn Garrett, Zeeva Parks, Velina Lewis, and May Maxwell.

On June 22, 1937, the respondent filed exceptions to the Intermediate Report and to various rulings of the Trial Examiner, and on July 1, 1937, presented oral argument thereon before the Board.

A supplemental charge having been filed by the Union, the Board, by its Regional Director above named, issued and duly served its supplementary complaint dated November 4, 1937, against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. With respect to the unfair labor practices, the supplementary complaint, in substance, alleged that on July 23, 1937, the Board certified the Union as the exclusive representative of all the respondent's production employees for the purposes of collective bargaining; and that on July 26, 1937, and at all times thereafter, the respondent, although requested, refused to bargain collectively with the Union. On November 10, 1937, the respondent filed its motion to dismiss the complaint of May 10, 1937, together with the supplementary complaint of November 4, 1937, on the grounds stated in its original motion to dismiss dated May 15, 1937. As additional grounds for dismissal, the respondent alleged that the Certification of Representatives issued by the Board on July 23, 1937, is not a final order and that charges predicated thereon are unwarranted and not binding upon the respondent. On the same day the respondent filed its answer to the supplementary complaint in which it denied that it had engaged in or was engaging in the unfair labor practices alleged therein.

Pursuant to notice served on all parties, a hearing was held in Dallas, Texas, on November 17 and 18, 1937, before William Griffin, the Trial Examiner duly designated by the Board. The Board, the

² At the commencement of the hearing, the Trial Examiner granted the motions of counsel for the Board to amend the complaint for the purpose of including allegations with respect to the discriminatory discharge of 17 employees and for the purpose of striking allegations with respect to a similar discharge of six employees. The complaint, as thus amended, alleged the discriminatory discharge of 30 employees.

respondent, and the Union were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the commencement of the hearing the respondent renewed its motion to dismiss the complaint. This motion was denied by the Trial Examiner.

The Board has reviewed the rulings of both Trial Examiners on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the respondent's exceptions to the Intermediate Report, and for the reasons and to the extent hereinafter set forth, they are sustained.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT³

Sheba Ann Frocks, Inc., was incorporated in Texas by its president, Jack Ginsberg, in January 1935, and since then has maintained its place of business in Dallas, Texas, where it manufactures ladies' silk, cotton, rayon, and woolen dresses. In addition, the respondent engages in contracting or furnishing labor to other dress manufacturers in Dallas. Under such arrangements, these manufacturers furnish material, already cut, to the respondent, which returns the finished dresses after having the material sewn by its employees.

The respondent'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 closely coordinated.

In 1936 the gross volume of the respondent'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. In the same year the respondent 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 respondent does contract work testified that over 90 per cent of the materials purchased by them and supplied to the respondent are shipped from points outside the State. Between 65 and 70 per cent of the output of the Marcy

³ These findings are repeated from the Decision and Certification of Representatives issued by the Board on July 23, 1937, which were predicated upon the record of the first hearing conducted in this case. (See 3 N. L. R. B. 97)

Lee Manufacturing Company, which in 1936 supplied the respondent 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 respondent was likewise shipped outside the State of Texas.

II. THE ORGANIZATIONS INVOLVED

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 respondent, and Local 204 limits its membership to cutters employed in similar manufacturing. Both locals have joined in instituting the proceedings through the International Ladies' Garment Workers' Union of America, the international body of which they are constituents.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain with the Union*

As we have found in our Decision and Certification of Representatives issued on July 23, 1937,⁴ which was predicated upon the evidence submitted both in support of the petition requesting an investigation and certification of representatives and in connection with this proceeding, the production employees of the respondent, exclusive of supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. We further found, and the record so disclosed, that during the month of January 1937, 32 of the respondent's employees had signed cards authorizing the Union to represent them for the purposes of collective bargaining with the respondent. This represented a majority of the respondent's production employees.

The Union contends that on January 30, 1937, John Ratekin, manager of the Union locals, requested Ginsberg, president of the respondent, to negotiate with him as the representative of the production employees. Ratekin testified that he called upon Ginsberg on the morning of January 30, and when he told Ginsberg that he represented his employees, Ginsberg stated that he was not interested and that he would not consider the Union under any circumstances. Ratekin further testified that he did not thereafter attempt to meet with Ginsberg, feeling that it would be "hopeless".

Upon cross-examination, Ratekin testified that his conversation with Ginsberg lasted five or ten minutes, and that it was the only time within a period of a year and a half that he had spoken to him

⁴ 3 N. L. R. B. 97.

about the Union. Ratekin admitted having previously stated, upon being asked whether he attached much importance to this visit, that "It was a friendly visit, that's all."

Although Ginsberg admitted that Ratekin had called at his office on January 30, he denied that the representation of the respondent's employees had been discussed. From all the evidence we are satisfied that Ratekin did not seriously attempt to confer with the respondent on that day. Indeed, the evidence shows that Ratekin, who happened to be visiting in the building, merely stopped off at the respondent's plant for a social call.

Considering the fact that the Union called a strike on February 11, 1937, in part because the respondent refused to negotiate, we cannot understand the Union's failure to attempt again to negotiate with the respondent, especially since Ratekin, himself, did not attach particular importance to his visit of January 30. From all the evidence, we are of the opinion that it was incumbent upon the Union to have used greater diligence or to have made some effort to meet with the respondent immediately before or after it called the strike. The evidence shows that immediately following the strike of February 11, the Union was always ready and willing to negotiate with the respondent. However, the Union never, by word or act, apprised the respondent of its desires.

We find that the respondent did not refuse to bargain with the Union on or about January 30, 1937.

As we have stated above, the Board on July 23, 1937, certified the Union as the exclusive representative of the respondent's production employees for the purposes of collective bargaining. On July 26, 1937, the Union, by registered letter, notified the respondent that a committee had been chosen to meet with it, and requested the respondent to fix a time and place in order to proceed with negotiations. The respondent admits that this letter was never answered, and that it unqualifiedly refused and still refuses to bargain with the Union.

The respondent takes the position that it is not required to bargain with the Union until after the Board renders this decision on the issues of the original complaint, and after this decision and the Decision and Certification of Representatives of July 23, 1937, are reviewed by the Courts. The issuance or withholding of a decision on a complaint cannot relieve the respondent of its obligation to observe the provisions of the Act. A finding that the respondent has not refused to bargain collectively cannot condone a subsequent refusal to bargain within the meaning of the Act.

We find that, after the issuance of the Certification of Representatives, the respondent, although requested by the Union, refused, and

still refuses, to bargain collectively with the Union as the exclusive representative of its employees.

B. *The discharges*

The complaint, as amended at the first hearing in this proceeding, alleged that between December 15, 1936 and February 13, 1937, the respondent discharged 30 employees for the reason that they joined and assisted the Union. The record indicates that between February 1 and February 11, 1937, the majority of these employees were either laid off or discharged. On February 11, because of this reduction in the number of Union employees, and because the respondent had allegedly refused to negotiate on January 30, the Union called a strike which presumably was still in effect at the time of the second hearing herein.

Although the record indicates that the respondent did not look with favor upon the Union activity which had succeeded in enlisting the majority of its employees, the evidence fails to establish that the 30 employees were discriminatorily discharged. The respondent contends that the number of its employees was reduced in order to meet a drop in production attendant upon the termination of its business season. There is little in the record to controvert this contention.

An analysis of the respondent's pay rolls, introduced into evidence, shows that on January 30, 1937, of the 56 production employees working, 33 were members of the Union and 23 were not affiliated. For the week ending February 9, 1937, of the 34 employees still working, 19 were Union members. It is clear that nonunion employees were laid off indiscriminately with Union employees.

In the light of all the evidence, we find that the discharge of the 30 employees was not because of their Union activity, and we shall dismiss the complaint in so far as such discriminatory discharges are alleged.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

During the first hearing in this case, Ginsberg testified that the strike had reduced the output of the respondent by two-thirds. No evidence was adduced at the second hearing to indicate that the effect of the strike, which was continuing at that time, had changed.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

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. Locals 121 and 204, International Ladies' Garment Workers' Union of America, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By refusing on July 26, 1937, and continuing to refuse at all times thereafter to bargain with Locals 121 and 204, International Ladies' Garment Workers' Union of America, as the exclusive representatives of the employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

3. By its refusal to bargain collectively with its employees as above described, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Sheba Ann Frocks, Inc., Dallas, Texas, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From refusing to bargain collectively with Locals 121 and 204, International Ladies' Garment Workers' Union of America, as the exclusive representatives of its production employees at its Dallas, Texas, plant, exclusive of supervisory employees;

(b) From in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Locals 121 and 204, International Ladies' Garment Workers' Union of America, as the exclusive representative of its production employees at its Dallas, Texas, plant, exclusive of supervisory employees, in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Immediately post notices in conspicuous places throughout its plant and maintain such notices for a period of thirty (30) consecutive days, stating that the respondent will cease and desist as aforesaid;

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith;

And it is further ordered that the allegations in the complaint that the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act, be, and they hereby are, dismissed.

[SAME TITLE]

AMENDMENT TO DECISION AND ORDER

March 5, 1938

On February 1, 1938, the National Labor Relations Board issued a Decision in this case in which, *inter alia*, it dismissed the complaint in so far as it alleged that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (3) of the National Labor Relations Act.

The National Labor Relations Board, having further considered the matter and finding that its Decision may be clarified by amendment, acting pursuant to Section 10 (d) of the National Labor Relations Act, 49 Stat. 449, hereby amends Section III (B) of its findings by striking out the last paragraph thereof, which reads as follows:

In the light of all the evidence, we find that the discharge of the 30 employees was not because of their Union activity, and we shall dismiss the complaint in so far as such discriminatory discharges are alleged.

and substituting therefor, the following:

The record amply shows that the 30 employees were laid off at the conclusion of the respondent's business season. Indeed, the respondent's answer alleged, and its forelady testified that most of these employees were called back to work upon resumption of operations. It is clear that the respondent still considered the persons laid off as employees whose work had ceased only temporarily, due to the slack season. In the light of all the evidence, we find that the 30 employees were not discriminatorily discharged, but were laid off for business reasons pending the full resumption of the respondent's business operations. We shall therefore dismiss the complaint in so far as such discriminatory discharges are alleged.