

In the Matter of FRENCH MAID DRESS COMPANY, INC., and INTERNATIONAL LADIES GARMENT WORKERS UNION, LOCAL NO. 166

*Case No. R-330.—Decided February 16, 1938*

*Ladies' Dress Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees—*Strike—Unit Appropriate for Collective Bargaining:* production employees; no controversy as to—*Representatives:* proof of choice: signed authorizations; comparison of pay roll with union list—*Certification of Representatives:* upon proof of majority representation.

*Mr. Charles A. Graham,* for the Board.

*Weisman, Quinn, Allan & Spett,* by *Mr. Isidore Miller,* of New York City, for the Company.

*Isserman & Isserman,* by *Mr. Abraham J. Isserman,* of Newark, N. J., for the Union.

*Mr. Harry A. Sellery, Jr.,* of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On September 15, 1937, International Ladies Garment Workers Union, Local No. 166, herein called the Union, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees at the Long Branch, New Jersey, factory of French Maid Dress Company, Inc.,<sup>1</sup> New York City, 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 September 20, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 2, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and

<sup>1</sup> Incorrectly designated as French Maid, Inc., in the petition and notice of hearing.

the Union. Pursuant to the notice, a hearing was held in New York City on October 7, 1937, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. The Board has reviewed the rulings of the Trial Examiner on objections to the introduction of evidence made during the hearing 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

French Maid Dress Company, Inc., is a New York corporation having offices in New York City and a factory in Long Branch, New Jersey. The business of the Company is the manufacture and sale of ladies' dresses.

All raw materials for the manufacture of its dresses are purchased by the Company in New York. Such materials consist principally of acetates, french crepe, cotton, trimming, and the other items usually required and used in the manufacture of ladies' dresses. The raw materials are shipped from New York by a hired truck to the factory in New Jersey, and the manufactured dresses are shipped to the Company's offices in New York in the same manner. At the New York offices the dresses are sold to women's dress stores located throughout the United States. The Company's dresses are then shipped from New York to such stores by express.

The Company has approximately 60 production employees at its factory in New Jersey and approximately ten employees at its offices in New York.

#### II. THE ORGANIZATION INVOLVED

International Ladies Garment Workers Union, Local No. 166, is a labor organization, affiliated with the Committee for Industrial Organization. Local No. 166, which admits to membership production employees at the Company's factory, has approximately 1,400 members.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Union began to conduct an organization drive at the Company's factory in July 1937. Up to September 22, 1937, the Union had secured the signatures of 45 of the Company's production em-

ployees to cards authorizing the Union to represent the signers for the purposes of collective bargaining. Thereafter, prior to the issuance on October 2, 1937, of the notice of hearing in this proceeding, the Union secured the signatures of three more production employees to such cards. Nevertheless, at the hearing counsel for the Company contended that it did not know if the production employees at its factory wished to be represented by the Union for the purposes of collective bargaining.

We therefore find that a question affecting commerce has arisen concerning the representation of employees of the Company.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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

#### V. THE APPROPRIATE UNIT

In its petition the Union alleged that all the production employees at the Company's factory in New Jersey constitute a unit appropriate for the purposes of collective bargaining. The Company raised no objection to this allegation at the hearing.

No claim was made that supervisory employees at the Company's factory should be included with the production employees at the factory. In accordance with our usual practice, therefore, we shall exclude supervisory employees from the unit including the other production employees at the Company's factory.

We find that the production employees at the Company's factory in Long Branch, New Jersey, excluding supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that such unit will insure to employees of the Company the full benefit of their right to self-organization and collective bargaining, and will otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The Union's authorization cards, referred to above, were introduced in evidence<sup>2</sup> for the purpose of checking them in order to identify the signers as employees of the Company. The Trial Exam-

<sup>2</sup> Board's Exhibit No. 2. The original objection to the introduction of these cards in evidence on the ground of lack of proof of authenticity was altered to an objection that the signers had not been identified as employees of the Company.

iner requested an officer of the Company at the close of the hearing to submit in evidence two of the Company's pay rolls: one for the pay-roll period prior to the filing of the petition; and one as of the day before the beginning of the strike referred to below. A comparison of the two pay rolls with the cards in evidence discloses the names of three persons, Angelo Strollo, Lillian Walch, and Augustine Cocuzza, appearing on three cards respectively, but not appearing on either of the pay rolls submitted by the Company. Since the exclusion of the cards of these three persons would not affect the results, we shall exclude the cards of Angelo Strollo, Lillian Walch, and Augustine Cocuzza in this proceeding in making a determination of the representative of the unit.

At the hearing it was testified that the signer of one of the cards had continued to work in the factory during the strike called by the Union, as described below. Such testimony may indicate that this employee has impliedly repudiated her prior authorization to the Union to represent her for the purposes of collective bargaining. Accordingly, we shall exclude her card in this proceeding in making a determination of the representative.

In making this determination we therefore exclude four of the 48 cards. After comparing the Company's two pay rolls with such cards in order to identify the signers thereof as production employees at the Company's factory, we include the remaining 44 cards.<sup>3</sup> As stated above, the Company's production employees at its Long Branch, New Jersey, factory number about 60.

At a union meeting on September 22, 1937, at which most of the production employees at the Company's factory who had signed such cards were present, the employees unanimously voted to go on strike. The strike began the next day, and the Company's factory was picketed by the Union. At the time of the hearing the strike and the picketing were still being carried on. In view of the provisions of Section 2 (3) of the Act, however, the workers on strike are to be regarded as employees.

We find, therefore, that the Union had been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. The Union is, therefore, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and we will so certify.

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<sup>3</sup> In such comparison we have also noted some slight variation in the spelling of a few names between the name as it appears on the pay rolls and as it appears on the card. In each case, such variation appears clearly immaterial.

## 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 employees at the Long Branch, New Jersey, factory of French Maid Dress Company, Inc., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company at its Long Branch, New Jersey, factory, excluding supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. International Ladies Garment Workers Union, Local No. 166, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

## 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, Local No. 166, has been designated and selected by a majority of the production employees, excluding supervisory employees, of French Maid Dress Company, Inc., New York City, at its Long Branch, New Jersey, factory, 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, Local No. 166, is the exclusive representative of all such employees for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of employment.