

In the Matter of PARAGON RUBBER CO.-AMERICAN CHARACTER DOLL COMPANY and TOY & NOVELTY WORKERS ORGANIZING COMMITTEE OF THE C. I. O.

Case No. R-571.—Decided March 17, 1938

Rubber Doll Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning unit as exclusive representative of its employees—*Unit Appropriate for Collective Bargaining:* production and maintenance employees exclusive of executives, supervisory, clerical, sales and machine shop employees, porter and engineer; two separate corporate entities treated as one employer; ownership, control and labor policies identical; production carried on in same building and in one continuous flow of operations from one company to the other—*Election Ordered:* to include those individuals laid off where company anticipates reemployment.

Mr. Norman H. Edmonds, for the Board.

Mr. Sidney S. Grant, for the Union.

Mr. E. G. Schaeffer, of Holyoke, Mass., and *Mr. Jack Wolff*, for Paragon and American Doll.

Mr. Howard S. Friedman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 13, 1937, United Toy and Novelty Workers Local Industrial Union No. 643,¹ herein called the Union, filed with the Regional Director for the First Region (Boston, Massachusetts) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Paragon Rubber Corporation,² herein called Paragon, and American Character Doll Co., Inc.,³ herein called American Doll, 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.

¹The original petition and Order Directing Investigation and Hearing incorrectly designated the Union as "Toy and Novelty Workers Organizing Committee of the C. I. O."

²The petition and amended petition incorrectly designated Paragon as "Paragon Rubber Company, Inc."

³The original petition incorrectly designated American Doll as "American Character Doll Co."

On December 30, 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 January 11, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon Paragon, American Doll, and the Union. Pursuant to the notice, a hearing was held on January 17 and 18, 1938, at Easthampton, Massachusetts, before Samuel H. Jaffee, the Trial Examiner duly designated by the Board. The Board and the Union were represented by counsel, while Paragon and American Doll were represented by Mr. E. G. Schaeffer, president of Paragon and treasurer of American Doll, and Mr. Jack Wolff, office manager of both companies. All parties participated in the hearing and were given full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner 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 COMPANIES

Paragon Rubber Corporation and American Character Doll Co., Inc., are New York corporations with their principal office and factory at Easthampton, Massachusetts. The two companies form a unified and integrated enterprise for the manufacture and sale of rubber dolls. The same three persons hold all the offices and directorships in both companies, although their positions in the two companies differ slightly. All the common voting stock is held equally by two of these three persons. The finished product is the result of participation of both companies. Paragon does the initial work, taking the raw materials and working them until they form the rough or "raw" parts of the dolls. Then they are transferred to American Doll, which finishes them. The plant is so laid out that there is a continuous flow of operations. The two companies occupy the same building and are separated only by a fire door and fire wall.

The two companies employ approximately 184 employees, including production, maintenance, supervisory, office and sales employees. Each company has its own pay roll, but the entire office force and

sales force are employed by American Doll. Whenever necessary, a clerical employee is loaned by American Doll to Paragon.

The entire output of Paragon is sold to American Doll, the price being set by the current market. Thus, all the selling of the finished product is done by American Doll, sales being made through its sales office in New York City. Approximately 95 per cent of the finished product is sold outside the State of Massachusetts.

Representatives of the companies admitted at the hearing that both were engaged in activities affecting interstate commerce.

II. THE ORGANIZATION INVOLVED

United Toy and Novelty Workers Local Industrial Union No. 643 is a labor organization affiliated with the Committee for Industrial Organization. The eligibility requirements of the Union are not clearly disclosed in the record, but it apparently admits to membership production and maintenance employees of the two companies.

III. THE QUESTION CONCERNING REPRESENTATION

On October 8 and 11, 1937, the Union sent letters to the companies claiming that it represented a majority of the companies' employees and asking that it be recognized as the bargaining agency for a collective agreement. Upon the failure of the companies to reply, the Union petitioned the Regional office of the Board. Through the efforts of the Board, several conferences were arranged between representatives of the Union and the companies, the last being on November 15, 1937, at which time the companies for the first time questioned the Union's claim that it represented a majority.

A tentative election agreement was drawn up, but no election was held because the companies insisted that they would not recognize the Union unless a majority of those eligible to vote cast ballots for the Union. The Union insisted on its right to bargain if a majority of those voting chose it as their bargaining agent. At the hearing the companies denied that the Union represents a majority of the employees in the appropriate unit.

We find that a question has arisen concerning representation of employees of the companies.

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 companies 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

The Union claims that all the production and maintenance employees of the two companies, excluding supervisory employees, executive employees, clerical employees, salesmen, foremen and foreladies, assistant foremen and foreladies, truck drivers, engineers, firemen, watchmen, machine shop employees, and porters, constitute a single appropriate unit for the purposes of collective bargaining. It states that the machine shop employees and engineers are subject to the jurisdiction of a different labor organization. The record contains no evidence that such employees desire to be included in the bargaining unit. The companies raised no objection to the unit sought by the Union.

We have found in Section I above that the two companies form a unified and integrated enterprise with one central control over management and labor policies. We conclude, therefore, that employees of the two companies should be included within a single bargaining unit.

We find that all the production and maintenance employees of the two companies, excluding supervisory employees, executive employees, clerical employees, salesmen, foremen and foreladies, assistant foremen and foreladies, truck drivers, engineers, firemen, watchmen, machine shop employees, and porters, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

There were introduced in evidence at the hearing pay rolls of the companies for the week ending October 16, 1937, showing approximately 152 employees within the appropriate unit. The Union claimed to represent 96 of the 152 employees. Although application cards of the Union were presented at the hearing, only one card was introduced in evidence. Opportunity, however, was given representatives of the companies to examine the cards and compare the signatures with those on the pay rolls. After such comparison the companies raised objection to 47 cards, either on the ground of genuineness of signature or on the ground that the person whose name appeared on the card was not an employee of the companies.

Under the circumstances we find that the question concerning representation which has arisen can be resolved only by means of an election by secret ballot.

All parties indicated willingness to use the pay rolls of the companies for the period ending October 16, 1937, to determine eligi-

bility, subject to certain qualifications. The Union claims that the names of four persons did not appear on either of such pay rolls, although they were regular employees, and that these four persons should be allowed to vote. The testimony at the hearing showed that the four were in fact regular employees. They shall herein be considered as employed during the pay-roll period ending October 16, 1937. There may also be some question as to persons whose names appeared on the pay rolls but who did not receive pay for the particular period. Since the evidence shows such persons to be employees of the companies, they will be eligible to vote. The companies seek to exclude from voting a number of persons laid off after October 16, 1937, because of a seasonal slump in business, who have found employment elsewhere. The evidence indicates, however, that the companies anticipate the reemployment of such persons when business again picks up. We feel, therefore, that such persons should be considered as retaining the status of employees who have been laid off but not discharged.

Subject to the above explanation, those eligible to vote will therefore be the employees of the companies within the appropriate unit during the pay-roll period ending October 16, 1937, excluding those who have since quit or been discharged for cause.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Paragon Rubber Corporation and American Character Doll Co., Inc., Easthampton, Massachusetts, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of the companies, exclusive of supervisory employees, executive employees, clerical employees, salesmen, foremen and foreladies, assistant foremen and foreladies, truck drivers, engineers, firemen, machine shop employees and porters, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

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

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Paragon Rubber Corporation and American Character Doll Co., Inc., Easthampton, Massachusetts, an election by secret ballot be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the First 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 the production and maintenance employees of Paragon Rubber Corporation and American Character Doll Co., Inc., during the pay-roll period ending October 16, 1937, excluding supervisory employees, executive employees, clerical employees, salesmen, foremen and foreladies, assistant foremen and foreladies, truck drivers, engineers, firemen, machine shop employees and porters, and exclusive of those who have quit or been discharged for cause between that period and the date of the election, to determine whether or not they desire to be represented by United Toy and Novelty Workers Local Industrial Union No. 643 for the purposes of collective bargaining.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Direction of Election.