

In the Matter of SIMMONS COMPANY and STEEL WORKERS ORGANIZING
COMMITTEE

Case No. R-592.—Decided March 26, 1938

Bed, Spring, Mattress, and Studio Couch Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as bargaining agency of its employees—*Unit Appropriate for Collective Bargaining:* production employees, excluding watchmen and supervisory employees—*Election Ordered:* eligibility to vote determined as of pay-roll period preceding hearing—*Certification of Representatives.*

Mr. John P. Jennings, for the Board.

Mr. John Despol, of San Francisco, Calif., for S. W. O. C.

Mr. John B. Oddone, of San Francisco, Calif., for F. W. U.

Mr. Don Cameron, of San Francisco, Calif., for F. W. U., and the United.

Mr. Wallace M. Cohen, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 13, 1937, Steel Workers Organizing Committee, herein called the S. W. O. C., filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Simmons Company, San Francisco, California, 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 January 29, 1938, 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 February 1, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the S. W. O. C., and upon the Furniture Workers Union, Local 1541,

herein called the F. W. U., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on February 10, 1938, at San Francisco, California, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The United Brotherhood of Carpenters and Joiners of America, herein called the United, intervened for the purpose of objecting to the holding of an election. The Board was represented by counsel and the S. W. O. C., the F. W. U., and the United by their representatives, and all participated in the hearing. The Company did not appear. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. Thereafter, letters in the nature of briefs were filed with the Board. 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 COMPANY

Simmons Company is a Delaware corporation engaged in the manufacture and sale of beds, springs, mattresses, and studio couches. It has executive offices in New York City and plants in eight States of the United States and four provinces of Canada. The plant of the Company at San Francisco, California, is the only one involved in this proceeding.

For the year 1937, sales of the products of the San Francisco plant amounted to \$3,361,000 in value, of which 45 per cent represent sales outside of the State of California and in foreign countries. Approximately 55 per cent of the raw materials used by the plant in 1937 were purchased from sources outside the State.

On November 13, 1937, the date of the filing of the petition, the employees on the pay roll of the Company numbered 703. On the pay roll of January 22, 1938, there were 519 employees.

II. THE ORGANIZATIONS INVOLVED

Steel Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production employees of the Company excluding supervisory employees, foremen and their assistants, clerical workers, watchmen, timekeepers, and teamsters, but including hand truckers, janitors, elevator operators, shipping clerks, stock clerks, and checkers.

Furniture Workers Union, Local 1541, is a labor organization affiliated with the United Brotherhood of Carpenters and Joiners of America which is in turn affiliated with the American Federation of Labor. It admits to its membership all production employees, excluding clerical workers, timekeepers, and teamsters, but including hand truckers, janitors, elevator operators, shipping clerks, stock clerks, checkers, watchmen, the superintendent and his assistant, and the supervisor of each department.

III. THE QUESTION CONCERNING REPRESENTATION

On October 25, 1935, a consent election was held among the employees of the Company, at its San Francisco plant, which resulted in the F. W. U. being designated as bargaining representative by a majority of the employees. As a result of conferences between the Company and the F. W. U., the Company, on September 28, 1936, posted on bulletin boards in the plant a memorandum of working conditions signed by the plant superintendent recognizing F. W. U. as the bargaining representative of the employees of the Company and setting forth certain working conditions. The memorandum, by its terms, was to remain in effect until July 31, 1937. Since July 31, 1937, the F. W. U. has attempted to negotiate an agreement with the Company, but as yet no agreement has been reached. The business agent of F. W. U. testified that "relations are being carried on under the old memorandum by mutual consent".

At the request of a committee of employees of the Company, the S. W. O. C. began organizational activities in the plant early in November 1937. On November 3, 1937, the S. W. O. C. wrote to the Company alleging that the S. W. O. C. was the collective bargaining agent of the employees and requesting a conference. There was no response to this letter. Subsequently, a committee representing the S. W. O. C. sought to confer with the management of the Company. The superintendent of the plant refused, claiming that the Company did not "do business with any local but Local 1541".

We find that a question has arisen concerning 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

The F. W. U. and the S. W. O. C. would include in the bargaining unit all production employees of the Company, excluding clerical employees, teamsters, and timekeepers, but including hand truckers, janitors, checkers, and elevator operators. The F. W. U., in addition, would include the superintendent and his assistant, the supervisor of each department and the watchmen. The S. W. O. C. contends that watchmen and supervisory employees should be excluded.

It has been our practice not to include supervisory employees within a bargaining unit composed essentially of production employees and to exclude watchmen from such a unit where objection to their inclusion is raised by a participating labor organization. We shall, therefore, exclude the supervisory employees and watchmen from the bargaining unit.

We find that the production employees of the Company at its San Francisco plant, including hand truckers, janitors, checkers, and elevator operators, but excluding clerical employees, supervisory employees, watchmen, teamsters, and timekeepers, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Both the F. W. U. and the S. W. O. C. claim to represent a majority of the employees of the Company within the appropriate unit, but neither has introduced evidence to substantiate its claim. The F. W. U. and the United vigorously oppose the holding of an election. Roy Phalen, secretary of the United, testified that an election would probably result in a temporary curtailment of production and stated that if the Company recognized any other labor organization the United would boycott the Company.¹ The Board's determination of the

¹ Q (By Mr. DESPOL) On what basis have you been able to ascertain that there will be a curtailment of work in the Simmons plant if the employees vote to go C. I. O.?

A. Well, the plans of our organization is to boycott the Simmons Company if they change their affiliation at this time. Now, we are quite strong throughout this country. I believe we have 2,200 locals in the State of California alone; we have about 365,000 people organized throughout the United States now; and a strenuous boycott would curtail production not only here in the plant in San Francisco but in all the plants.

Q (Trial Examiner HOLDEN) By your organization, you refer to what?

A. (The WITNESS) The United Brotherhood of Carpenters and Joiners of America

Q (Trial Examiner HOLDEN) Their entire membership?

A. (The WITNESS) Yes

Q (By Mr. DESPOL) Their boycott in this would be similar to the boycott of the lumber companies in the Pacific Coast?

A. I have been given that assurance.

issues herein cannot, of course, be influenced by such threats of boycott.

We find that an election by secret ballot is necessary to resolve the question concerning representation.

The S. W. O. C. requests that it be designated on the ballot as: "Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 2062, through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization." We see no reason why this request should not be granted.

The S. W. O. C. urges that November 13, 1937, be selected as the date for determining eligibility to vote, claiming that the 703 employees on the pay roll as of that date are representative of the Company's permanent staff. The F. W. U. and the United state that November 13, 1937, was a peak period of employment and that, if an election is held, an eligibility date should be adopted which will exclude seasonal employees as they seldom return from one season to another.

Beginning January 1, 1938, the Company inaugurated a policy of working its employees overtime during peak periods and of division of work at other times. Accordingly, it has set up a pay roll of 519 employees as its permanent staff, stating that it "will be able to get by with very few, if any, casual employees." Under the circumstances, we conclude that the persons eligible to vote are those employees of the Company within the appropriate unit who were employed during the pay-roll period immediately preceding February 10, 1938, the date of the hearing herein, 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 Simmons Company at its San Francisco, California, plant, 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 San Francisco, California, plant, including hand truckers, janitors, checkers, and elevator operators, but excluding clerical employees, supervisory employees, watchmen, teamsters, and timekeepers, 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 Rela-

tions 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 a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Simmons Company, San Francisco, California, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth 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 the production employees of Simmons Company at its San Francisco, California, plant, who were employed by it during the pay-roll period immediately preceding February 10, 1938, including hand truckers, janitors, checkers, and elevator operators, but excluding clerical employees, supervisory employees, watchmen, teamsters, and timekeepers, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 2062, through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, or by United Brotherhood of Carpenters and Joiners of America, Furniture Workers Local 1541, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN J. WARREN MADDEN took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

April 22, 1938

On March 26, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted among the production employees of Simmons Company at its San Francisco, California, plant, who were employed by it during the pay-roll period immediately preceding February 10, 1938, including hand truckers, janitors, checkers, and elevator operators, but excluding clerical employees, supervisory employees, watchmen, teamsters, and timekeepers and those who had since quit or been discharged for cause, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 2062,

through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, or by United Brotherhood of Carpenters and Joiners of America, Furniture Workers Local 1541, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither. On April 4, 1938, the Board issued an Order denying the petition of the Furniture Workers Union requesting postponement of the election and a reopening of the record.

Pursuant to the Decision and Direction of Election, an election by secret ballot was conducted on April 14, 1938, under the direction and supervision of Alice M. Rosseter, the Regional Director for the Twentieth Region (San Francisco, California), among the eligible employees of Simmons Company. On April 14, 1938, the said Regional Director acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote.....	493
Total number of ballots cast.....	466
Total number of votes in favor of Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 2062, affiliate of C. I. O.....	263
Total number of votes in favor of United Brotherhood of Car- penters and Joiners of America, Furniture Workers Local 1541, affiliated with the A. F. of L.....	191
Total number of votes in favor of neither organization.....	12
Total number of blank ballots.....	1
Total number of void ballots.....	2
Total number of challenged ballots.....	28

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 2062, through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the production employees of Simmons Company, San Francisco, California, including hand truckers, janitors, checkers, and elevator operators, but excluding clerical employees, supervisory employees, watchmen, teamsters, and timekeepers, as their representative for the purposes of collective bargaining, and that, pursuant to

Section 9 (a) of the Act, Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge 2062, through Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.