

In the Matter of FRIED, OSTERMANN Co. and LOCAL 80, INTERNATIONAL GLOVE WORKERS OF AMERICA, A. F. L.

Case No. R-583.—Decided June 23, 1938

Garment, Glove, and Mitten Manufacturing Industry—Investigation of Representatives: petition for, dismissed, where no question concerning the representation of employees in an appropriate unit has arisen.

Mr. Morris L. Forer, for the Board.

Miller, Mack & Fairchild, by *Leon F. Foley* and *James D. Porter*, both of Milwaukee, Wis., for the Company.

Padway, Goldberg & Tarrell, by *Mr. I. E. Goldberg* and *Mr. David Previant*, both of Milwaukee, Wis., and *Mr. Lewis G. Hines*, of Washington, D. C., for the International.

Mr. Max E. Geline, of Milwaukee, Wis., for the Amalgamated.

Mr. Sylvester Garrett, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On January 14, 1938, Local 80, International Glove Workers of America, herein called the International, filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Fried, Ostermann Co.,¹ Milwaukee, Wisconsin, 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 18, 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.

¹The petition and order directing an investigation and certification of representatives incorrectly designated the Company as "Fried-Ostermann Company."

On January 18, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the International, and upon the Milwaukee Joint Board, Amalgamated Clothing Workers of America, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on January 27, 28, 29, and 31, 1938, at Milwaukee, Wisconsin, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board, the Company, the International, and the Amalgamated 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. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. Thereafter the Company, the International, and the Amalgamated filed briefs with the Board and participated in oral argument before the Board, at Washington, D. C., on February 18, 1938. 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

The Company, a Wisconsin corporation, is engaged in the manufacture and sale of leather gloves, leather and mackinaw mittens, leather coats and jackets, mackinaw coats and jackets, and leather helmets. Its manufacturing plant is located at Milwaukee, Wisconsin. Approximately 92 per cent of the raw materials used by the Company are obtained from sources outside Wisconsin, while nearly 98 per cent of the finished product is shipped outside the State for sale. Sales by the Company's own sales force are made throughout the United States, and in connection therewith the Company maintains merchandise warehouses in New York City and in Dallas, Texas. In addition, a wholly owned subsidiary corporation is operated by the Company for the purpose of selling its products exclusively to department-store trade throughout the country. At its Milwaukee plant the Company employs about 870 persons. The value of gross sales by the Company in 1937 was approximately \$3,200,000.

II. THE ORGANIZATIONS INVOLVED

Local 80, International Glove Workers of America, is a labor organization affiliated with the American Federation of Labor, ad-

mitting to its membership all employees in the Glove Department of the Company, excluding clerical and supervisory employees.

Milwaukee Joint Board, Amalgamated Clothing Workers of America, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all employees in the manufacturing departments of the Company, excluding cafeteria, clerical, maintenance, shipping, and supervisory employees.

III. THE APPROPRIATE UNIT

At the Company's Milwaukee plant there are approximately 760 production employees, excluding supervisory personnel. This number is comprised of about 480 employees in the Glove Department, and approximately 280 in the Garment Department. In its petition, the International claims that the bargaining unit should consist of all Glove Department employees, excluding those with supervisory duties. The International does not assert, it is important to note, that the Glove Department employees constitute a distinct skilled craft. It does claim, however, that the Glove Department is so distinctly separated in the Company's business from the Garment Department that the employees of the two should be deemed to constitute two separate bargaining units.

The Amalgamated contends that any bargaining unit should be upon a plant-wide basis, including employees of both the Garment and the Glove Departments. It asks that the petition of the International be, therefore, dismissed.

The earlier labor relations of the Company illumine the issue thus raised. Prior to 1928 there had been no apparent organizational activity among the Company's employees by any labor organization. During that year, however, the Amalgamated succeeded in obtaining a number of members among the Company's workers. In 1930 the Amalgamated conducted a strike of 5 months' duration among the employees of the Company. At this time an attempt was made to induce workers in both the Glove and Garment Departments to join the Amalgamated. This effort was appreciably successful in winning over to the Amalgamated a number of the Garment Department employees as well as of the cutters in the Glove Department. The latter group consists of about 115 male employees who are the most highly skilled of the glove workers. At the same time, however, the glove sewers and the glove workers, composed largely of female employees, remained adamant to the solicitations of the Amalgamated organizers.

Although the strike was unsuccessful, the Amalgamated and the Company on December 30, 1938, negotiated a strike settlement

agreement applicable to employees throughout the entire plant. In addition to providing machinery for handling questions growing out of the return of strikers to work, the agreement went on to establish a procedure whereby employees from all of the various divisions of the Company could negotiate with the Company through employee committees on questions of wages, hours, and working conditions. The agreement was of 1 year's duration.

In the late summer of 1933 the Amalgamated once more conducted a protracted strike at the Milwaukee plant. The strikers were composed predominantly of workers from the Garment Department, and of the cutters from the Glove Department. Again the balance of the glove workers remained at work during the strike, principally because a large wage increase was granted them by the Company in order to influence them against participating in the strike. After 7 weeks of strife, the Amalgamated and the Company entered into a contract on September 22, 1933. By its terms this was to remain operative until December 31, 1934, with an automatic renewal from year to year thereafter unless either party gave notice of a desire to terminate the contract more than 30 days prior to December 31 of any given ensuing year. The agreement recognized the Amalgamated as sole bargaining agent for the approximately 115 cutters in the Glove Department, as well as for all employees in the Garment Department excluding supervisory employees. The balance of the glove workers were, however, excluded from the bargaining unit. Originally the Amalgamated had sought recognition as bargaining agent for these employees as well, but had been unable to win this concession from the Company. During the course of the negotiations, however, the Amalgamated leaders expressed their determination ultimately to extend the contract to cover all of the glove workers. At the time, only a very few glove workers, other than the cutters, were members of the Amalgamated.

During the next few years there seems to have been no serious effort made to organize the remaining glove workers. The evidence shows, however, that during 1936 individual glove workers were approached to join the Amalgamated, although no sustained membership drive was launched. In January 1937, the Amalgamated definitely requested the Company to extend the contract to include all employees in both departments, exclusive of supervisory employees, and at the same time sought a wage increase for all such employees. These requests thereupon became subjects of negotiation between the parties during the next 5 months. During the latter part of this period the Amalgamated commenced a campaign to organize the remaining glove workers, with some measure of success. A witness on behalf of the International testified that about

May 1, 1937, she was present at an Amalgamated organizational meeting attended by 50 or 60 glove sewers.

During the middle of May, the International made its first attempt to organize the glove workers, by distributing leaflets announcing an International meeting. About this time, the Company permitted Amalgamated members to solicit the glove workers during working hours. Finally, on June 30, 1937, the Company and the Amalgamated entered into a supplemental agreement extending the original 1933 contract to include all production employees in both departments, excluding those with supervisory duties. Since the execution of this agreement, therefore, the Amalgamated has represented the employees of both departments for the purposes of collective bargaining.² Not until July 28, 1937, did the International approach the Company with a request to be recognized as collective bargaining agent for the Glove Department employees. No question is raised in this case as to whether on June 30, 1937, the Amalgamated actually represented a majority of the production employees in the two departments, excluding supervisory employees.

At the hearing the International contended that the supplemental agreement was the result of a desire to prevent it from organizing the glove workers, rather than a recognition by the parties that a single plant-wide unit was appropriate. Both the Company and the Amalgamated denied this assertion. The evidence is clear that well before the date of the agreement the Amalgamated had manifested its desire to act as bargaining agent for all the glove workers. It had made attempts to organize them in conjunction with the strikes of 1930 and 1933.³ The strike settlement agreement of 1930 related to the entire plant. The 1933 contract included the most highly skilled glove workers—the cutters—while remaining employees in the Glove Department were excluded because of the Company's desire to minimize the concessions won by the newly recognized Amalgamated. From January 1937 until June 1937, the Company and the Amalgamated had bargained over a wage increase to be applicable to employees throughout both departments. On June 14, 1937, these negotiations culminated in the granting of a 10-per cent

² Despite their inclusion within the bargaining unit, many glove workers remained aloof from the Amalgamated. Growing tension engendered by this situation culminated in a brief strike in November 1937, when a large group of glove cutters refused to prepare materials for the glove sewers. Shortly thereafter the Company and the Amalgamated agreed that in the rehiring of employees following the Christmas period seasonal lay-off preference should be given Amalgamated members. This agreement precipitated filing of charges with the Board alleging that the Company was unlawfully influencing its employees to join the Amalgamated. Action on these charges has been withheld pending the outcome of the present case.

³ At the time of each strike Amalgamated officials requested the cooperation of the International in organizing the glove workers. Each request was refused.

wage increase. In the face of such evidence that the Company, as well as the Amalgamated, had come to regard a plant-wide bargaining unit as desirable, we cannot view the supplemental agreement as born primarily of a desire to eliminate the International as a possible bargaining agent for the glove workers.

Aside from this, however, the International further contends that the Glove Department constitutes a business unit so distinctly separate from the Garment Department that the two should be regarded as two separate bargaining units. In support of this contention it is stated that the work done in the Glove Department is unrelated to the work done in the Garment Department, that the employees of the two departments are not easily interchangeable, that the departments are physically segregated, and that the Company administers the two departments separately.

Although both glove and garment making are spoken of loosely as "needle trades," it is clear that the types of work performed in the Company's two departments are somewhat different. Special training is required for specific operations in both departments, and the Company, with rare exceptions, does not transfer employees between departments. On the other hand, there is evidence that approximately 4 per cent of the work turned out by the Glove Department is done in conjunction with the Garment Department.

Both departments are housed in the Company's two large five-story factory buildings, with an office building between them and a warehouse building to the rear. In the older of the two large buildings the first three floors are devoted to glove-making operations, while the fourth and fifth floors are given over to garment making. In the newer of the large buildings the second and fourth floors are occupied by divisions of the Garment Department. The first floor houses both the glove shipping room, and the leather receiving room,⁴ while the third floor contains both the garment stockroom and the glove lining division of the Glove Department.⁵ On the fifth floor are located the garment cutting division and the cafeteria which serves the entire plant. Corresponding floors of the two buildings are joined together by connecting passageways, except in the case of the second floor. It appears, further, that glove cutters-work in the first floor of the plant warehouse building. In the two-story office building are located offices which are the same for both departments. Part of the first floor of that building is occupied by the garment stockroom.

⁴ At the time leather is ordered it is not earmarked for use in either of the two departments. Upon arrival in the receiving room, it is sorted into various types, best suited to either glove or garment manufacture and then distributed accordingly.

⁵ Actual operations of the two departments on this floor are separated by a fence.

For some administrative purposes the Company has maintained a distinction between the two departments. At the hearing, however, the Company took the position that the plant as a whole constituted a single business unit, and was operated as such. The evidence amply supports this position. A single general manager handles financial matters, purchases, and sales for the entire plant. A single superintendent supervises all production, and passes through the entire plant from four to six times daily in the course of his duties. Raw materials for both departments are ordered together. All supplies pass through a single warehouse. Both garments and gloves are sold to the same customers, by the same salesmen, are shipped together, and billed on the same invoices.

After carefully weighing all of the evidence, we are unable to reach the conclusion that the manner in which the Company operates the Glove Department requires that the department be regarded as a separate unit for the purposes of collective bargaining. We cannot regard the admitted differences between the two departments as cogent, in view of all the other circumstances brought out at the hearing.

In other plants producing both gloves and garments, the Amalgamated has organized the employees on a plant-wide basis. At the hearing it was testified that this was true as to six of the eight or more companies engaged in a business comparable to that of the Company. An Amalgamated local in one such plant was organized prior to January 1937. On the other hand, it appears that the International has organized no glove workers in other plants comparable to that here involved.

Under all of the evidence presented in this case, therefore, we are of the opinion that the employees of the Glove Department, excluding supervisory employees, should not be considered as a separate bargaining unit. We find that the unit sought by the International is not appropriate for the purpose of collective bargaining.

IV. THE QUESTION CONCERNING REPRESENTATION

Since as stated in Section III we conclude a unit corresponding to that alleged in the petition filed in this case is not appropriate, we find no question has been raised concerning the representation of employees of the Company in an appropriate bargaining unit.

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

CONCLUSION OF LAW

No question concerning representation of employees of Fried, Ostermann Co. in a unit appropriate for the purposes of collective bar-

gaining has arisen, within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusion of law the National Labor Relations Board hereby dismisses the Petition for Investigation and Certification filed by Local 80, International Glove Workers of America.