

In the Matter of MODEL BLOUSE Co., ELIAS SAVADA, INDIVIDUALLY AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MODEL BLOUSE Co., ALSO DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SAVADA BROTHERS and FEDERAL LABOR UNION No. 21,560 (A. F. OF L.).

Case No. R-814.—Decided July 30, 1938

Men's Garment Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* production employees, excluding foremen, foreladies and other supervisory employees, janitors, packers, truck drivers, mechanics, and office help, and including inspectors; inspectors included in unit, since they exercise no supervisory powers, are paid less than the average employee, and are frequently transferred to work as operators—*Election Ordered.*

Mr. Jerome I. Macht, for the Board.

Mr. Max J. Leibowitz, of New York City, for the Company.

Benjamin R. Simons and M. Herbert Syme, by *Mr. Benjamin R. Simons and Mr. Maurice Abrams*, of Philadelphia, Pa., for the Union.

Mr. David Rein, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On April 21, 1938, Federal Labor Union No. 21,560, affiliated with the American Federation of Labor, herein called the Union, filed with the Regional Director for the Fourth Region (Philadelphia, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Model Blouse Co., Millville, New Jersey, 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 May 10, 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 May 12, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. Pursuant to the notice, a hearing was held on May 19, 20, 21, and 23, at Millville, New Jersey, before Harold Stein, 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. During the course of the hearing, the Trial Examiner made several rulings on motions and objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After the close of the hearing, the Company filed a brief to which the Board has given due consideration.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is wholly owned by Elias Savada. It maintains its principal office in New York City under the name of Savada Brothers. Plants in various States are operated under different names and styles. The plant in Millville, New Jersey, which is the only one involved in the present proceeding, is operated under the name and style of Model Blouse Co., and is engaged in the manufacture of blouses, shirts, pajamas, and underwear. All the raw materials for the manufacture of these goods are shipped to Millville, New Jersey, from New York City and all the finished products are shipped back to New York City to be sold and distributed. The Company employs approximately 460 persons.

II. THE ORGANIZATION INVOLVED

Federal Labor Union No. 21,560 is a labor organization affiliated with the American Federation of Labor, admitting to its membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 20, 1938, the Union by letter requested the manager of the Company to meet with a committee of the Union as the representative of the employees of the Company for the purposes of collective bargaining. The Company never replied to this letter and at the hearing denied that the Union represented a majority of its employees.

We find that a question 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

It was agreed by the Union and the Company that an appropriate bargaining unit should include all of the production employees of the Company, excluding foremen, foreladies, and other supervisory employees, janitors, packers, truck drivers, mechanics, and office help.

There was some controversy as to whether or not some 60 inspectors should be considered supervisory employees. The evidence shows, however, that although they occasionally returned work as unsatisfactory, they exercised no supervisory powers over the other employees. They were paid less than the average employee and were frequently transferred from their duties as inspectors to work as operators. Accordingly, they will be included in the appropriate unit.

We find that all production employees of the Company at its plant in Millville, New Jersey, excluding foremen, foreladies and other supervisory employees, janitors, packers, truck drivers, mechanics, and office help, and including inspectors, constitute a unit appropriate for the purposes of collective bargaining and that such unit will insure to the employees of the Company 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

According to the Company's pay roll for the week ending April 22, 1938, which was introduced into evidence at the hearing, there were 453 employees in the appropriate unit on that date.¹ The Union introduced in evidence 243 cards signed by employees designating the Union as their collective bargaining representative. The signatures on 129 of these cards were identified either by the employees who had signed the cards or by an official of the Union who had witnessed the signatures. Seventeen of the two hundred and forty-three cards were challenged individually as having been signed in the same handwriting as some other card or because of some other defect. The Trial Examiner sustained the challenges as to four of these cards, but overruled them as to the remainder.

¹The pay roll actually contained 460 names in the appropriate unit but the Company official who identified the pay roll testified that seven of the employees had quit before the date of the pay roll.

In the presentation of its case, the Company introduced in evidence a petition signed by employees of the Company, which stated that the signatories to the petition did not wish to be represented by the Union or any other union. This petition contained 229 names, 4 of which were names of persons not included in the appropriate unit. Forty-seven of the names on the petition duplicated the names of employees who had signed cards designating the Union as their bargaining representative.

The employees who identified the petition for the Company testified that they had circulated the petition in the plant of their own initiative and that Company officials had played no part in its circulation. Their testimony on this point, however, was vague and indefinite. They were unable to relate with any degree of particularity the circumstances of its origin and circulation. One of the witnesses could say little more than that he had received the petition from some unknown person, had circulated it throughout his department, and had then returned it to another unknown person.

Evidence of this kind suggests that the signatures to this petition may have been obtained with the Company's assistance, but in the absence of more positive evidence to that effect, doubt is cast upon the majority status of the Union by the signatures on the petition introduced by the Company. Under these circumstances, we do not believe that we should certify the Union as the exclusive representative of the employees in the appropriate unit without holding an election. Accordingly, we find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot.

In accordance with our usual practice, we find that the employees whose names appear on the pay-roll list of April 22, 1938 (the pay-roll date nearest to the date of the filing of the petition), excluding those who had quit before that date² and those who have since quit or been discharged for cause, shall be eligible to vote in the election.

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 Model Blouse Co., Millville, New Jersey, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All production employees of the Company, excluding foremen, foreladies and other supervisory employees, janitors, packers, truck

² These seven are C Robinson, A. Storms, M Eichelberger, D. Foster, H. Chiarello, M. Maines, and Lillian Johnson.

drivers, mechanics and office help, and including inspectors, constitute a unit appropriate for the purpose 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 authorized by the Board to ascertain representatives for collective bargaining with Model Blouse Co., Millville, New Jersey, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 production employees, excluding foremen, foreladies and other supervisory employees, janitors, packers, truck drivers, mechanics and office help, and including inspectors, whose names appear upon the Company pay roll for the pay-roll period ending April 22, 1938, except those who had quit before that date³ and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Federal Labor Union No. 21,560 for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

August 13, 1938

On July 30, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding. The Direction of Election provided that "an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth Region." On August 9, Federal Labor Union No. 21,560 (A. F. of L.) filed a "motion to reopen hearing for further consideration." The Board will postpone the election pending decision on this motion.

The Board hereby amends its Direction of Election by striking out the words "within fifteen (15) days from the date of this Direction" and substituting therefor the words "at such time as the Board may in the future direct."

³ See names listed in footnote 2.