

In the Matter of CLINTON GARMENT COMPANY¹ and INTERNATIONAL
LADIES GARMENT WORKERS UNION

Case No. R-812.—Decided August 2, 1938

Dress Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal of employer to recognize petitioning union as bargaining agency—*Unit Appropriate for Collective Bargaining:* production employees excluding foreladies, part-time instructors and other supervisory employees, machinists, shipping clerks, janitors, designers, and office employees—*Election Ordered—Petition dismissed:* No union representative received majority vote at Board election.

Mr. Stephen M. Reynolds, for the Board.

Mr. Emmett P. Delaney, of Clinton, Iowa, for the Union.

Mr. Erwin Feldman, of New York City, for the Company.

Mr. William F. Guffey, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 2, 1938, International Ladies Garment Workers Union,² herein called the Union, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois), a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Clinton Garment Company, Clinton, Iowa, 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 April 25, 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.

¹ It appeared at the hearing that the full name of the Company is "The Clinton Garment Company."

² Petition is signed in abbreviated form: "Intl. Ladies Garment Workers Union."

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On May 5, 1938, the Regional Director issued a notice of hearing, and on May 17, 1938, an order of continuance, copies of which were duly served upon the Company and the Union. Pursuant to the order of continuance, a hearing was held on May 26, 1938, at Clinton, Iowa, before Samuel Jaffee, 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 on 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.

On June 28, 1938, oral argument was had before the Board in Washington, D. C. The Company was represented by counsel and presented its argument. The Union did not appear.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Clinton Garment Company is a corporation incorporated under the laws of Iowa in November 1936. It is engaged in the manufacture of cotton dresses. Its sole place of business is Clinton, Iowa. The four or five persons who are officers, directors, and sole stockholders in the Company bear the same relation to R. & M. Kaufmann, Inc., Aurora, Illinois, herein called the Illinois corporation. The Company has a contract with the Illinois corporation which provides, among other things, that the Company will manufacture cotton dresses for the Illinois corporation according to specifications furnished by the latter. The sole and exclusive business of the Company is the manufacture of cotton dresses for the Illinois corporation. In the terms of the trade the Company is a "contract shop" and attains its compensation on a "cut, trim and make basis." It utilizes 14,000 square feet of floor space, 204 sewing machines, 4 cutting tables and 10 pressing stands. During the year 1937 the Company manufactured 20,000 dozen dresses.

The raw materials used by the Company in the manufacture of dresses consist mainly of cotton fabric and such miscellaneous items as buttons, thread and trimmings. The cotton fabric comes from textile centers in New England and from various States in the South. The other items come from various sources in the Eastern States. All the raw materials are purchased in the name of the Illinois corpora-

tion, but approximately 75 per cent of the raw materials used by the Company in the Clinton plant are shipped directly from the various points in the East and South to the Clinton plant, all such shipments being marked as follows: "R. & M. Kaufmann Company, Inc., care of Clinton Garment Company, Clinton, Iowa." Shipments of raw material are made principally by rail, but some of the shipments go first to Aurora, Illinois and are reshipped to the Company by motor trucks operated by the Keeshin Motor Service.

Title to the raw material as well as the finished product is always in the Illinois corporation. The Company is in substance merely a processor. After the Company cuts, sews, presses, and otherwise finishes the garments, the finished garments are sent back to the Illinois corporation for sale and distribution.

At the time of the hearing the Company employed approximately 210 persons.

II. THE ORGANIZATION INVOLVED

International Ladies Garment Workers Union is a labor organization originally chartered by the American Federation of Labor and now affiliated with the Committee for Industrial Organization, herein called the C. I. O., admitting to its membership all workers engaged in production of women's and children's garments.

III. THE QUESTION CONCERNING REPRESENTATION

In July or August 1937 the Union began to organize employees of the Company. Several meetings were held for the purpose of creating interest in the Union. A number of employees signed union membership cards. On October 20, December 10, and December 22, 1937, the Union, by letter, requested conferences for the purpose of collective bargaining with the Company. The Company made no reply to these letters. At the hearing Harry Rufer, general organizer for the Union, testified that on February 2, 1938, 74 or 76 employees of the Company were members of the Union. The Union did not introduce in evidence membership cards which it claimed to have in its possession. At the oral argument before the Board, the Company stated that the Union also refused to show its membership cards to the Trial Examiner and queried whether the evidence supporting the Union's membership claims was sufficient to show that a question concerning representation had arisen. There is no indication in the record that the Union refused to show its cards to the Trial Examiner. While the evidence appearing in the record is insufficient to serve as a basis for certification, it is nevertheless sufficient to show the existence of a question concerning representation which can be resolved by the holding of an election.

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 Union, in its petition, claimed that all employees of the Company, except foreladies, office help, shipping clerks, janitors, and designers, constitute a unit appropriate for the purposes of collective bargaining. At the hearing the Union clarified its claim by defining "employees" as those "actively engaged in production of cotton garments in the Clinton Garment plant." The Company made no objection to the unit described by the Union and made no claim for any other unit. We see no reason for deviating from the unit claimed by the Union.

Questions were raised concerning the inclusion or exclusion from the unit of part-time instructors, a machinist, and a part-time shipping clerk.

There are three or four part-time instructors. They were first hired as machine operators and as the Company was growing and new employees were being hired, they became operator-instructors. Originally the foreladies had acted as instructors. When the operator-instructors first began instructing, they spent about half their time as operators and half their time as instructors, but during the 8 weeks preceding the hearing they were engaged almost entirely in instructing new employees. The Union apparently desires their exclusion from the unit and the Company desires their inclusion. Since their work at the time of the hearing was mainly supervisory we shall exclude them from the unit.

The Union desires to exclude from the unit a machinist who keeps the production machines in good working condition. The Company apparently takes no position regarding the machinist. The record discloses that the machinist is not eligible to membership in the Union. We shall exclude the machinist from the unit.

One employee, whose regular work is the operation of a cutting machine, spends 33 to 40 per cent of his time in the shipping room, counting and packing garments, and addressing the packages. The Union makes no specific request for the exclusion of this part-time shipping clerk, but it does exclude full-time shipping clerks. It is clear from the record that the Company desires that he be included in the unit. We find that this employee is primarily engaged in production and we shall include him in the unit.

We find that the production employees of the Company, excluding foreladies, part-time instructors and other supervisory employees, machinists, shipping clerks, janitors, designers, and office employees 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 to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Union claims to represent 74 or 76 employees. No membership cards or other evidence, except oral testimony to that effect by the general organizer of the Union, was introduced in support of this claim. We find that the question which has arisen concerning representation of employees of the Company can best be resolved by an election by secret ballot.

The Union claims that eligibility to vote should be determined on the basis of the Company's pay roll of December 22, 1937, the date on which the Union first claimed majority representation, and not later than February 2, 1938, the date on which the petition was filed. The Company claims that May 26, 1938, the date of the hearing, should be the determinative date. On December 22, 1937, there were 98 employees in the appropriate unit; on January 22, 1938, there were 131; and at the time of the hearing there were 204. The Company is a young and growing enterprise and there has been a constant increase in the number of employees since it began operations. From the filing of the petition to the date of the hearing there was an increase of about 73 employees. Under these circumstances we are of the opinion that a more accurate determination of the desires of all the Company's employees affected by our investigation will be obtained by insuring eligibility to vote in the election to all the employees in the appropriate unit during the pay-roll period next preceding the date of the hearing. Accordingly, all employees in the appropriate unit during the pay-roll period next preceding May 26, 1938, the date of the hearing, excluding those who

have since quit or have 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 The Clinton Garment Company, Clinton, Iowa, 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, excluding foreladies, part-time instructors and other supervisory employees, machinists, shipping clerks, janitors, designers, and office employees 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 authorized by the Board to ascertain representatives for collective bargaining with The Clinton Garment Company, Clinton, Iowa, 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 Thirteenth Region, acting in this matter as the agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the production employees of The Clinton Garment Company, Clinton, Iowa, who were in the Company's employ during the pay-roll period next preceding May 26, 1938, excluding foreladies, part-time instructors and other supervisory employees, machinists, shipping clerks, janitors, designers, and office employees, and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Ladies Garment Workers Union, for the purposes of collective bargaining.

[SAME TITLE]

SUPPLEMENTAL DECISION

AND

ORDER

September 1, 1938

On August 2, 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 within fifteen (15) days from the date of the Direction among all the production employees of The Clinton Garment Company, who were in the Company's employ during the pay-roll period next preceding May 26, 1938, excluding foreladies, part-time instructors and other supervisory employees, machinists, shipping clerks, janitors, designers, and office employees, and those who had since quit or been discharged for cause, to determine whether or not they desired to be represented by International Ladies Garment Workers Union, for the purposes of collective bargaining.

Pursuant to the Direction, an election by secret ballot was conducted on August 16, 1938, at Clinton, Iowa, under the direction and supervision of the Regional Director for the Thirteenth Region (Chicago, Illinois). On August 18, 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 served upon the parties an Intermediate Report on the ballot. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot, the Regional Director reported as follows:

Total number eligible to vote.....	191
Total number of ballots cast.....	177
Total number of ballots cast for International Ladies Garment Workers Union	55
Total number of ballots cast against International Ladies Garment Workers Union.....	119
Total number of challenged ballots cast.....	3
Total number of blank ballots cast.....	0
Total number of void ballots cast.....	0

The results of the election show that no collective bargaining representative has been selected by a majority of the employees. The petition for investigation and certification of representatives of employees of The Clinton Garment Company, Clinton, Iowa, will therefore be dismissed.

ORDER

By virtue of 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 ORDERED** that the petition for investigation and certification of representatives of employees of The Clinton Garment Company, Clinton, Iowa, filed by International Ladies Garment Workers Union, be, and it hereby is, dismissed.

MR. EDWIN S. SMITH took no part in the consideration of the above Supplemental Decision and Order.

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