In the Matter of FRIEDMAN BLAU FARBER COMPANY *and* INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL NO. 295

Case No. R-284.—Decided November 19, 1937

Ladies Knit Goods Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority status; existing collective agreement with one of rival organizations no bar to election; current strike called by petitioning union in protest against attempts of employer to coerce employees into joining the rival organization; interference, restraint, and coercion by employer in choice of representatives for collective bargaining—*Unit Appropriate for Collective Bargaining:* all employees in the plant except office and supervisory employees; history of collective bargaining in plant; desire of employees as evidenced by membership in both of rival organizations—*Election Ordered:* employees on pay roll for period immediately preceding strike eligible to vote.

Mr. Harry L. Lodish and *Peter Di Leone*, for the Board.

Frankel & Frankel, by *Mr. Fred Frankel*, and *Stanley & Smoyer*, by *Mr. Welles K. Stanley*, of Cleveland, O., for the Company.

Payer, Corrigan, Cook & Pilliod, by *Mr. William J. Corrigan*, of Cleveland, O., for the I. L. G. W. U.

Orgill, Maschke & Wickham, by *Mr. John Orgill* and *Mr. H. Frank Van Lill*, of Cleveland, O., for the A. F. of L. and Knit Goods Local.

Mr. Warren L. Sharfman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 15, 1937, International Ladies' Garment Workers' Union, Local No. 295, herein called the I. L. G. W. U., filed a petition with the Acting Regional Director for the Eighth Region (Cleveland, Ohio), alleging that a question affecting commerce had arisen concerning the representation of employees of Friedman Blau Farber Company, Cleveland, Ohio, 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 August 5, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regula-

tions—Series 1, as amended, ordered an investigation and authorized the Acting Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 9, 1937, the Acting Regional Director issued a notice of hearing to be held at Cleveland, Ohio, on August 16, 1937, copies of which were duly served upon the Company, the I. L. G. W. U., and the American Federation of Labor, herein called the A. F. of L., a labor organization claiming to represent employees in the unit alleged in the petition to be appropriate. Thereafter, the parties were notified by telegram of the postponement of the hearing to August 18, 1937. Pursuant to the notice, a hearing was held on August 18, 1937, at Cleveland, Ohio, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. Due to the illness of the chief witness for the A. F. of L. the hearing was adjourned until August 23, 1937. The hearing resumed on that date, and continued on August 24, and 25, 1937, before James C. Paradise, another Trial Examiner duly designated by the Board.

The A. F. of L., and Knit Goods Workers' Local No. 20868, herein called the Knit Goods Local, together filed a motion to intervene which was granted by the Trial Examiner. The Board, the I. L. G. W. U., the A. F. of L., and the Knit Goods Local were all represented by counsel, and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings 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.

At the hearing the Trial Examiner granted the parties a seven-day extension of time in which to file their briefs and a stipulation concerning the claims of the I. L. G. W. U. and the A. F. of L. to represent a majority of the employees of the company. Pursuant to this extension of time, briefs in behalf of all of the parties and a stipulation, tabulating a Company pay-roll, and the applications for membership in the I. L. G. W. U. and the A. F. of L., were filed with the Board.

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

Findings of Fact

I. THE BUSINESS OF THE COMPANY

The Friedman Blau Farber Company is an Ohio corporation with its principal office and factory in Cleveland, Ohio. It also has a sales

office in New York City. The Company is engaged in the manufacture of knitted outerwear. Its annual sales amount to $1,700,000 and its annual purchases to $750,000. It is one of the ten largest manufacturers in the industry.

The Company purchases approximately 90 per cent of its raw materials, consisting principally of wool, cotton, and rayon, outside the State of Ohio. Ninety per cent of its finished products are shipped to points outside Ohio, one-half of them on special order.

During normal periods the Company has about 400 employees. In addition to carrying on the operations usually incident to the manufacture of knitted outerwear, the Company also makes its own paper boxes, dyes its own materials, and operates a cafeteria.

II. THE ORGANIZATIONS INVOLVED

The International Ladies' Garment Workers' Union is a labor organization affiliated with the Committee for Industrial Organization. It admits as members, workers in the ladies knitted goods industry. On June 16, 1937, it chartered Local No. 295 with jurisdiction over the employees in the knitted goods industry in Cleveland, Ohio. At this time the I. L. G. W. U. took over, with their consent, such of the employees of the Company as had previously joined the United Textile Workers' Union.

The American Federation of Labor is a labor organization having among its members, workers from almost all branches of American industry. On June 18, 1937, it chartered Knit Goods Workers' Local No. 20868 which admits to membership all of the employees of the Company except office and supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

In April 1937 a group of employees at the Company, dissatisfied with the results of collective bargaining through the Employees' Representative Plan existing at the plant, and spurred on by circulars distributed by the United Textile Workers' Union, decided to join an outside union. A number of these employees joined the United Textile Workers' Union. Later on they were transferred to the International Ladies' Garment Workers' Union when it was determined by the unions that the I. L. G. W. U. had jurisdiction over the production workers at the Company. Subsequently, other employees joined the I. L. G. W. U. On June 3, the I. L. G. W. U. wrote to the Company requesting a conference for the purpose of negotiating with respect to its members. No answer to this letter was received.

Late in April or early in May 1937, the American Federation of Labor appointed a committee with Coleman Claherty as its chairman to organize the knit goods workers in Cleveland for the A. F. of L.

Claherty called upon Phillip Frankel, the secretary and attorney of the Knitted Outerwear Manufacturers of Cleveland, a trade association to which the Company belonged, and urged upon him the advantages which a union contract with the A. F. of L. would bring to members of such association. Frankel arranged several meetings between Claherty and officials of the members of the association during the month of May. At one of these meetings the Company agreed to open its plant to A. F. of L. organizers and to enter into a contract with the A. F. of L. if it succeeded in obtaining a majority of the employees as members. At the time of this agreement the A. F. of L. did not as yet have any members in the employ of the Company.

On June 7, 1937, the Company admitted four A. F. of L. organizers into its factory. Mr. Friedman and Mr. Farber, officers of the Company, introduced the organizers to the officers of the Employees' Representative Plan, whom they had called together. The organizers spoke of the advantages of the A. F. of L., and the officers of the Plan, after calling in the remaining representatives, voted to disband the Employees' Representative Plan and to disregard its contract with the Company. They then decided to join the A. F. of L. and recommend to the other employees that they do the same. Around noon time, the organizers, accompanied by the representatives under the Employees' Representative Plan, circulated throughout the factory. Work was stopped in each department without objection by the foreman, and the employees were asked to sign up with the A. F. of L. During this time the power in some of the departments was turned off. The foremen or foreladies were present in all departments. In some cases they advised the employees to sign the cards. Mr. Friedman, one of the officers of the Company, was present in the winding department during this time, and testimony disclosed that he expressed himself as opposed to any union, but said that if there was to be a union it would be the A. F. of L. It was further testified that, after taking out his watch, he gave one employee, in the presence of others, five minutes to sign with the A. F. of L. or get out. The organizers with the knowledge and apparent approval of the Company told the workers that they would be fired if they refused to sign. Three hundred and fourteen employees signed cards.

It is clear that the actions of the officers and supervisory employees of the Company created among the employees a well-founded feeling of fear for their jobs if they did not sign the cards, and that the Company, in total disregard of the provisions of the Act, interfered with and coerced its employees in the exercise of their rights to self-organization, to join or assist labor organizations, and to choose representatives for the purposes of collective bargaining. This interference and coercion on the part of the Company casts grave doubts on the

question of whether a majority of their employees joined the A. F. of L. free of employer interference and coercion.

In protest against these activities, and some allegedly discriminatory lay-offs, the I. L. G. W. U. called a strike at the Company on June 28, 1937. The plant was closed down for approximately two weeks. It reopened on July 12, with many new workers, as the members of the I. L. G. W. U. remained on strike.

In the meantime the Company had continued negotiations with the A. F. of L. On July 8, the members of the A. F. of L. approved, at a mass meeting attended by approximately 300 employees of the Company, the provisions of an agreement which had been drawn up by Claherty and Frankel in May. These provisions were then incorporated into a written contract and signed by the A. F. of L. and the Company on July 9. This contract provided for recognition of the A. F. of L. as sole bargaining agent for all of the employees of the Company, except foremen, foreladies, overseers, office help, and salesmen.

On August 11, the Knit Goods Local, chartered by the A. F. of L., had a regular meeting at the Metal Trades Hall, at which time 137 of the employees of the Company signed a resolution declaring that they were not coerced into joining the A. F. of L., that they approved the contract entered into with the Company, and that they signed the resolution of their own free will. The following day, 169 more employees signed this resolution as they went to and from lunch in the company cafeteria. Of the 306 employees who signed the resolution, 212 were in the employ of the Company immediately preceding the strike.

The A. F. of L. contends that the contract entered into with the Company on July 9, is a bar to an election. However, as pointed out above, the interference, intimidation, and coercion on the part of the Company substantially negatives the contention of the A. F. of L. that it had been freely designated as their representative by a majority of the employees at the time of the contract.[1] Furthermore, the stipulation filed with the Board shows that 139 employees who signed A. F. of L. cards on June 7, subsequently signed up with the I. L. G. W. U. prior to July 9, when the contract was signed. It is contended further, that even if the employees were coerced into joining the A. F. of L. on June 7, the contract should nevertheless be a bar to an election, inasmuch as a majority of the persons employed by the Company immediately preceding the strike, have, of their own free will, signed a resolution declaring they were not co-

[1] In *Matter of Stone Knitting Mills Company* and *American Federation of Labor;* In *Matter of Bamberger Reinthal Company and Federal Knitting Mills Company* and *International Ladies' Garment Workers' Union,* Cases Nos. R-200, R-201, R-202, 3 N. L. R. B., 257, decided August 7, 1937.

erced into joinng the A. F. of L., and approving the contract entered into between the A. F. of L. and the Company on July 9.

We find however, that the printed statements contained in the resolution do not alter the conclusions as to coercion previously drawn. In light of the Company's activities on June 7, the presentation of the resolution for signature openly, and upon Company property, did not afford to the employees an opportunity to express their desires in the matter freely and without coercion. It is apparent that they have vacillated between the A. F. of L. and I. L. G. W. U. because their choice of representatives has been influenced by factors which should be eliminated in choosing representatives under the provisions of the Act. It seems likely that a definitive expression of the employees' wishes will be obtained only after they are permitted to vote by a secret ballot free from the fear of retribution for expressing themselves adversely to the Company's wishes.

We find that a question has arisen concerning the representation of employees of Friedman Blau Farber Company.

IV. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning representation, which has arisen in connection with the operations of the Company described in Section 1 above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

At the hearing the I. L. G. W. U. contended that the appropriate unit for collective bargaining should include only those production and maintenance employees whose work related to the production of knitted goods, exclusive of office and supervisory employees. Thus, it would exclude the workers employed in the box manufacturing department, in the shipping department, and in factory maintenance and service (except the maintenance of productive machinery), and restaurant employees, designers, checkers, and inspectors, as not being production employees. It would exclude also as supervisory employees all supervisors, foremen, and straw-bosses. The A. F. of L., on the other hand, would include in the appropriate bargaining unit all employees except office employees and supervisory employees with authority to hire and discharge. The Company favors an inclusive bargaining unit similar to that advocated by the A. F. of L.

The Employees' Representative Plan, which was the only organization that had previously bargained with the Company, was organized on a plant-wide basis. An examination of the stipulation, filed with

the Board, which contains the names and occupations of the employees and shows whether they signed up with the I. L. G. W. U. or the A. F. of L., indicates that practically all of the employees in each department, and in every classification, signed up with one or the other. It also shows that the I. L. G. W. U. has some members among the groups of employees which they contend should be excluded from the appropriate unit. We see no reason, therefore, for limiting the unit in the manner suggested by the I. L. G. W. U.

Both the A. F. of L. and the I. L. G. W. U. would exclude supervisory employees from the appropriate unit. The A. F. of L., however, only includes in this category employees with authority to hire and discharge. The stipulation, referred to above, shows that the supervisory employees, including supervisors, foremen, and straw-bosses, in addition to those with authority to hire and fire, expressed no desire to participate in the question concerning representation inasmuch as they have not affiliated with either union. Furthermore, the contract between the A. F. of L. and the Company excludes "foremen, foreladies, overseers, office help and salesmen", and thus seems to negative their contention that only those employees with authority to hire and discharge should be excluded from the appropriate unit.

In order to insure to the Company's employees the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that the employees of the Company, except office employees, supervisors, foremen, and straw-bosses, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

VI. THE DETERMINATION OF REPRESENTATIVES

We find that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot to determine which of the unions, if either, the employees in question desire to represent them. Since the last period of normal operation was the week preceding the strike, all persons who were employed in the appropriate unit during the pay roll period ending June 26, 1937, shall be eligible to vote.

Conclusions of Law

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 Friedman Blau Farber Company, Cleveland, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees of the Company, except office employees, supervisors, foremen, and straw-bosses, 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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Friedman Blau Farber Company, Cleveland, Ohio, an election by secret ballot shall be conducted within ten (10) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth 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 persons who were employed during the pay-roll period ending June 26, 1937, except office employees, supervisors, foremen, and straw-bosses,[2] to determine whether they desire to be represented by International Ladies' Garment Workers' Union or American Federation of Labor for the purposes of collective bargaining, or by neither.

APPENDIX A

Albrecht, Opal
Branditz, A. W.
Bruder, Lula
Caplan, Max
Ellis, Charles
Fiedler, E. H.
Friedman, Sam
Herbst, Anna
Hoekman, Richard
Holst, Benjamin C.
Kelbach, Anton
Kolb, Helen
Limbacher, Willard
Neuman, Stanley J.
Petroff, Sam
Shuart, Lottie
Stell, Herbert
Strimac, Peter
Trutza, Nick
Vogt, Freda
Wrubleski, Helen

[2] For the names of the employees thus excluded, see Appendix A.