

In the Matter of CANADIAN FUR TRAPPERS CORPORATION, CANADIAN FUR TRAPPERS OF NEW JERSEY, INC., JORDAN'S INC., MORRIS DORNFIELD doing business as WERTH'S WEARING APPAREL,¹ and DEPARTMENT AND VARIETY STORES EMPLOYEES UNION, LOCAL 1115-A²

Case No. R-357.—Decided January 13, 1938

Retail Ladies Wearing Apparel—Investigation of Representatives: controversy concerning representation: refusal by employer to recognize and bargain with union until question of representation is determined by Board—*Unit Appropriate for Collective Bargaining:* all employees except extra Saturday help, store managers, and supervisory employees; organization of business; history of organization among employees involved; history of collective bargaining relations with employer; no controversy as to—*Election Ordered*

Mr. Will Maslow, for the Board.

Mr. Henry Gottfried, of Newark, N. J., and *Mr. Harold F. Berg*, of New York City, for the Employers.

Mr. Samuel L. Rothbard, *Mr. Sol D. Kapelsohn*, and *Mr. Robert Brown*, of Newark, N. J., for the U. R. E.

Mr. Leon Schechter, of Newark, N. J., for the D. V. S. E.

Mr. Bernard W. Freund, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 8, 1937, Department & Variety Stores Employees Union, Local 1115-A, Retail Clerks International Protective Association, affiliated with the American Federation of Labor, herein called the D. V. S. E., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., and Morris Dornfeld, doing business as Werth's Wearing Apparel, Newark, New Jersey,

¹At the hearing it was stipulated that the correct names of the employers are as stated above. All orders and pleadings herein are hereby amended to conform to the stipulation.

²On motion of counsel for the Board, the name of the petitioner in the caption of this case has been amended to read as set forth above.

and Paterson, New Jersey, herein called the Employers,³ 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 October 22, 1937, 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 October 25, 1937, the Regional Director issued a notice of hearing, copies of which were served upon each of the Employers⁴ and upon Retail Sales Clerks Union of New Jersey, now known as United Retail Employees of America, Local 108, and herein called the U. R. E., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on November 1 and 3, 1937, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board and the Employers were represented by counsel; the D. V. S. E., by its business manager. All participated in the hearing. The U. R. E. was represented by counsel, and appeared twice at the hearing for the purpose of making motions and entering objections. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Over the objection of the U. R. E., the Trial Examiner admitted evidence pertaining to compliance by the Employers with a previous order of the Board in a related case.⁵ The evidence did not bear upon the issues of the instant proceeding, and should not have been received. However, the ruling of the Trial Examiner in this respect was not prejudicial error. During the course of the hearing, the Trial Examiner made several rulings on motions, and on objections to the holding of the hearing⁶ and to the admission of other evi-

³ Before amendment by the Board (see Note 1, *supra*), the petition described the Employers as: Canadian Fur Trappers Corp., Canadian Fur Trappers of New Jersey Inc., Jordan's Inc., and Morris Dornfeld, doing business as Worth Wearing Apparel.

⁴ Copies of the notice were addressed to Canadian Fur Trappers, Inc., to Canadian Fur Trappers of New Jersey, to Jordan's Inc., and to Morris Dornfeld doing business as Worth Wearing Apparel.

⁵ *Matter of Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., Morris Dornfeld, doing business under the name of Worths Wearing Apparel and Retail Sales Clerks Union of New Jersey*, 3 N L R B 580

⁶ On September 20, 1937, the U. R. E. filed with the Regional Director a charge alleging in substance, among other things, that the Employers herein dominated and controlled the D. V. S. E., and were intimidating their employees, and coercing and compelling them to abstain from membership in the U. R. E. and to become and remain members of the D. V. S. E. On October 22, 1937, after due investigation, the Regional Director dismissed the charge. The U. R. E. thereupon on October 30, 1937 requested the Board to review this action of the Regional Director. It was the contention of the U. R. E., which entered the above objections, that the instant hearing upon representation of employees could not properly be held until the merits of the above charge were finally determined.

dence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. There was reserved for determination by the Board a ruling on a motion by counsel for the Board to defer decision of this case until the Board had reviewed the action of the Regional Director in dismissing a charge against the Employers previously filed by the U. R. E.⁷ The Board has heretofore reviewed and affirmed the described action of the Regional Director.⁸ The motion has therefore become moot.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

The Employers are engaged in the purchase and sale of women's fur and cloth coats and other women's apparel, operating retail establishments in the States of New York and New Jersey. Three stores are conducted at Newark, New Jersey, through Jordan's Inc., a New Jersey corporation, through Canadian Fur Trappers of New Jersey, Inc., likewise a New Jersey corporation, and through Morris Dornfeld, an individual, doing business as "Werth's Wearing Apparel". The fourth New Jersey store of the Employers, located at Paterson, is also operated in the name of Jordan's Inc. Central buying and managerial offices for all stores are maintained by the Employers in New York City, in the same building in which a retail business is carried on through Canadian Fur Trappers Corporation, a New York corporation.

All the Employers are controlled and dominated by the members of a single family group, who own substantially all the stock and act as officers and directors of the corporations, divide among themselves the profits of "Werth's Wearing Apparel", and determine and administer all policies of the Employers, including labor policies. Together the Employers form a unified and integrated enterprise.

Few purchases are made by the individual stores. Substantially all merchandise sold by the Employers in New Jersey is billed and delivered by the wholesalers to the New York offices, from where it is distributed as needed, by truck or railway express, to the four New Jersey stores. There is some movement of damaged and defective goods from New Jersey back to New York City.

The average annual volume of business of the four New Jersey stores is over \$725,000. Their annual advertising bill amounts to about \$72,500. Pay rolls average over \$2,225 per week, for the four stores.

⁷ See Note 6, *supra*. The reference here is to the same charge.

⁸ On December 10, 1937.

The Employers advertise their merchandise over the radio, through the mails, and in newspapers having a circulation in more than one state, and have a registered trade mark used in interstate commerce.⁹

Counsel for the Employers stipulated that they are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and are subject to the jurisdiction of the Board.

II. THE ORGANIZATIONS INVOLVED

Department & Variety Stores Union, Local 1115-A, Retail Clerks International Protective Association, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all persons employed by the Employers in the State of New Jersey except executives and supervisors.

United Retail Employees of America, Local 108, is a labor organization affiliated with the Committee for Industrial Organization. It admits to its membership persons employed by the Employers.

III. THE QUESTION CONCERNING REPRESENTATION

The Board has heretofore ordered the Employers to cease and desist from bargaining collectively with any labor organization unless and until such labor organization has been selected in an election conducted by the Board as the bargaining agent of the employees of the Employers.¹⁰ No such election has been conducted by the Board. The D. V. S. E. claims to represent substantially all persons employed by the Employers in their four stores located at Newark, New Jersey and Paterson, New Jersey, and desires to bargain collectively with the Employers. No evidence was introduced nor claims made by any party with respect to the representation of other persons employed by the Employers.

We find that a question has arisen concerning representation of persons employed by the Employers in their four stores located at Newark, New Jersey, and Paterson, New Jersey.

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 Employers set forth in Section I above, has a close, intimate, and substantial

⁹ All of the above findings of fact concerning the business of the Employers have been made either in accordance with the written stipulation which was introduced into evidence (Board's Exhibit No. 2), or in pursuance to oral stipulations entered into at the hearing between counsel for the Board and for the Employers.

¹⁰ *Matter of Canadian Fur Trappers Corporation, et al.*, 3 N. L. R. B. 5800.

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 Employers' stores at Newark, New Jersey, sell similar articles of apparel, transfer merchandise and clerks back and forth between them as needed, and have an intercommunicating telephone system. It would appear that these three stores and the fourth in nearby Paterson, New Jersey, together have been considered the agreed unit in previous collective bargaining, and that union organization has been consistent with this practice. The D. V. S. E. contended at the hearing that all of the approximately 70 persons employed in the four New Jersey stores of the Employers, excepting executive and supervisors, constitute a unit appropriate for the purposes of collective bargaining. No objection to such a unit was made by any of the parties.

Upon consideration of the record, the Board inclines to the view that store managers should be specifically excluded from the unit because of their necessarily numerous supervisory duties, and extra Saturday help because of the temporary tenure of their employment.

We find that all persons employed by the Employers in their four stores located at Newark, New Jersey, and Paterson, New Jersey, excluding extra Saturday help, store managers, executives, and supervisors, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Employers 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 question of representation which has arisen will properly be resolved by means of an election by secret ballot. Evidence introduced at the hearing indicated that some of the employees are members of the U. R. E. The representative of the D. V. S. E. stated he had no objection to the name of the U. R. E. appearing on the ballot. We will so provide.

There being no expression of a different preference in determining eligibility to vote, we will select the last pay roll period preceding the date of the filing of the petition.

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 persons employed by Canadian Fur Trappers Corpora-

tion, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., and Morris Dornfeld, doing business as Werth's Wearing Apparel, in their four stores located at Newark, New Jersey and Paterson, New Jersey, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All persons employed by the Employers in their four stores located at Newark, New Jersey and Paterson, New Jersey, excluding extra Saturday help, store managers, executives, and supervisors, 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 the purposes of collective bargaining with Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., and Morris Dornfeld, doing business as Werth's Wearing Apparel, Newark, New Jersey, and Paterson, 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 Second 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 employed by Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., and Morris Dornfeld, doing business as Werth's Wearing Apparel, in their four stores located at Newark, New Jersey, and Paterson, New Jersey, during the pay roll period immediately preceding September 8, 1937, excluding those who have since quit or been discharged for cause, and excluding extra Saturday help, store managers, executives, and supervisors, to determine whether they desire to be represented by Department & Variety Stores Union, Local 1115-A, Retail Clerks International Protective Association, affiliated with the American Federation of Labor, or by United Retail Employees of America, Local 108, affiliated with the Committee for Industrial Organization, or by neither.