

NATIONAL ASSOCIATION OF WOMEN'S AND
CHILDREN'S APPAREL SALESMEN, INC.

Docket 8691. Order, Dec. 1, 1969

Order admitting into the record a decision of the NLRB relative to respondent's status as a labor union.

ORDER RECEIVING NLRB DECISION INTO THE RECORD

This matter is before the Commission upon complaint counsel's motion to file new documentary evidence, filed November 10, 1969; respondents' answer in opposition thereto, and complaint counsel's reply.

Complaint counsel, pursuant to Sections 3.71 and 3.72 of the Commission's Rules of Practice and Procedure request the Commission to receive as new evidence the Decision on Review and Order in *Bambury Fashions, Inc., et al., Employers, and National Association of Women's and Children's Apparel Salesmen, Inc., Petitioner*, 179 NLRB No. 75. In support of this motion, complaint counsel rely on the following grounds:

1. Since the complaint herein was issued, respondents have maintained that they are a labor organization, and as such are not within the jurisdiction of the Federal Trade Commission or that the activities complained of are exempt from antitrust liability pursuant to Sections 6 and 20 of the Clayton Act [15 U.S.C. § 17; 20 U.S.C. § 22].
2. As partial support for their assertion, counsel for respondents rely upon a decision of the Regional Director, Region 2, National Labor Relations Board, dated December 13, 1967, previously placed into evidence by stipulation of counsel dated January 24, 1968.
3. The Decision on Review and Order holds that the National Association of Women's and Children's Apparel Salesmen is disqualified from acting as a labor organization with regard to the traveling salesmen sought to be represented in that proceeding.
4. In view of the importance placed upon the determination of the Regional Director by respondents, counsel supporting the complaint believe that the Decision on Review and Order of the National Labor Relations Board is necessary to bring this matter up to date.

It should be noted that there is no dispute on the authenticity of the decision, which complaint counsel seek to put in the record. Respondents' counsel, by letter of November 4, 1969, to the Secretary of the Commission, themselves brought the decision to the attention of the Commission, stating:

We believe that you may wish to bring this decision of the Board to the attention of the Commission. Also, we wish to advise the Commission that NAWCAS intends to appeal this decision.

Respondents' counsel nevertheless oppose introduction of the decision into evidence on the ground that the Board's order is subject to appeal, and that the record on which the NLRB acted failed to "encompass evidence of a substantial nature dealing with the employee status of the traveling salesmen-members of many of the largest manufacturers in the industry, but rather deals only with the status of the traveling salesmen of the limited number of manufacturers against whom petitions for certification elections were filed."

The Commission, although it could take official notice of the decision in question, has determined that the Board's decision should be included in the record. The NLRB's decision was rendered upon an appeal from a decision of the Board's Regional Director, which has been placed into evidence in the record of this proceeding pursuant to stipulation of counsel. The Commission is of the view that the public interest will best be served if it is in a position to appraise the stipulated evidence on the basis of a complete record. It may be noted in this connection that respondents, by motion of January 25, 1968, urged the Commission to stay the proceedings pending the NLRB decision, which is the subject of complaint counsel's motion of November 10, 1969. Accordingly,

It is ordered, That the Decision on Review and Order of the National Labor Relations Board in *Bambury Fashions, Inc., et al., Employers, and National Association of Women's and Children's Apparel Salesmen, Inc., Petitioner*, 179 NLRB No. 75, be, and it hereby is, received in the record of this proceeding.

THE PAPERCRAFT CORPORATION

Docket 8779. Order, Dec. 1, 1969

Order denying respondent's request for permission to appeal the examiner's order of November 13, 1969, denying a continuance of the hearing date.

ORDER DENYING REQUEST FOR PERMISSION TO APPEAL

This matter is before the Commission upon respondent's request for permission to file an interlocutory appeal from the hearing examiner's ruling of November 13, 1969, denying respondent's motion for a continuance of the hearing date in this proceeding from January 5, 1970, to March 9, 1970. The request

was filed on November 19, 1969, and counsel supporting the complaint filed their opposition to the request on November 25, 1969.

Respondent advances two reasons for its request, which, if granted, it wishes to be considered as the substantive appeal.

1. The uncertainty surrounding the scheduling of these hearings due to the pending court proceeding brought by respondent, seeking to enjoin the Commission from further proceedings and seeking to compel the issuance of Special Reports by the Commission. (*Papercraft Corporation v. F.T.C., et al.*, Civil Action 69-1136, United States District Court for the Western District of Pennsylvania.) While we agree that the pendency of this proceeding in which respondent has until December 19, 1969, to file its response to the Commission's motion to dismiss and for summary judgment introduces an element of uncertainty we do not see how it involves substantial rights or will materially affect the final outcome of this proceeding. If respondent is successful in its suit for injunctive relief, a continuance of the hearings would result as a matter of course. A ruling against respondent in its injunctive suit would have no bearing on the issue of a continuance. Furthermore, the Commission has consistently held that absent a clear abuse of discretion by the examiner, who is charged with the conduct of the proceeding, the Commission will not interfere with his rulings. No such abuse has been alleged or can be found in the instant case before us.

2. Respondent alleges that the January trade shows will make it difficult to secure witnesses who might want to attend these shows and that this justifies a continuance. At the present juncture, it would appear premature to grant a continuance on the basis of conflicts which may arise. In any event, such matters as the scheduling of witnesses are within the province of the examiner, whose rulings on such matters should not be disturbed by the Commission.

For the foregoing reasons, respondent's request will be denied. Accordingly,

It is ordered, That respondent's request for permission to appeal the examiner's order of November 13, 1969 be, and it hereby is, denied.