

In the Matter of HENRY & ALLEN, INC. *and* INTERNATIONAL UNION,
UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. OF L.

Case No. 3-R-640.—Decided September 29, 1943

Fraser Brothers, by Mr. Henry S. Fraser, of Syracuse, N. Y., for the Company.

Mr. Joseph Green, of Auburn, N. Y., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile Workers of America, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Henry & Allen, Inc., Auburn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis V. Cole, Trial Examiner. Said hearing was held at Auburn, New York, on September 8, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, counsel for the Company moved to dismiss the petition on various grounds. The Trial Examiner reserved rulings. The motions are hereby denied.¹ The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

¹ Counsel for the Company moved to exclude the representative of the Union from participating in the hearing on the ground that he is not a member of the Bar. There is nothing in the Act or the Rules and Regulations requiring a part to be represented by an attorney. We regard this ground for the motion as little short of frivolous.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Henry & Allen, Inc., is a New York Corporation engaged in the manufacture of drop forgings, agricultural implements, and small tools at Auburn, New York. During the 12-month period preceding September 1, 1943, the Company purchased raw materials of at least the value of \$400,000, approximately 10 percent of which was shipped to it from points outside the State of New York. During the same period the Company sold finished products of the value of at least \$750,000 over 50 percent of which was shipped to points outside the State of New York. The Company admits, for the purpose of this proceeding that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

During July 1943 the Union requested the Company to recognize it as exclusive collective bargaining representative of the Company's employees. The Company refused this request.

A statement of the Trial Examiner, read into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We, find, in agreement with a stipulation of the parties, that all production and maintenance employees of the Company, excluding office and clerical employees, guards, inspectors, timekeepers, executives, foremen, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status

² The Trial Examiner reported that the Union presented 69 authorization cards bearing apparently genuine signatures of persons whose names appear on the Company pay roll of September 4, 1943. There are approximately 94 employees in the appropriate unit.

The Company moved to dismiss the petition because of the refusal of the Trial Examiner to permit an inspection of the authorization cards. The motion is hereby denied. See *Matter of H. M. Siskin and Garrison Siskin, doing business as R. H. Siskin & Sons*, 41 N. L. R. B. 187, fn. 3.

of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Union requests that it appear on the ballot as "International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, Local 825, Auburn, New York." The request is hereby granted.

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 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Henry & Allen, Inc., Auburn, New York, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, Local 825, Auburn, New York, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.