

In the Matter of ANACONDA WIRE & CABLE COMPANY and UNITED  
ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO

*Case 2-R-4137.—Decided September 29, 1943*

*Chadbourne, Wallace, Parker & Whiteside*, by *Mr. Dwight R. Collin*, of New York City; and *Mr. Richard M. Stewart*, of Hastings-on-Hudson, N. Y., for the Company.

*Mr. Frank Scheiner*, of New York City, for the U. E.

*Ashe & Rivkin*, by *Mr. David I. Ashe*, of New York City, for the IBEW.

*Mr. Robert Silagi*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America, CIO, herein called the U. E., alleging that a question affecting commerce had arisen concerning the representation of employees of Anaconda Wire & Cable Company, Hastings-on-Hudson, New York, herein called the Company,<sup>1</sup> the National Labor Relations Board provided for an appropriate hearing upon due notice before Daniel Baker, Trial Examiner. Said hearing was held at New York City, on August 31, and September 1, 1943. The Company, the U. E., and International Brotherhood of Electrical Workers, Local B-1243, herein called the IBEW; appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

A motion to dismiss the petition, made at the hearing by the IBEW, was referred to the Board for ruling. For the reasons set forth in Section III, *infra*, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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<sup>1</sup> At the hearing the petition was amended to show the correct designation of the Company.  
52 N. L. R. B., No. 179.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Anaconda Wire & Cable Company is a Delaware corporation which maintains its principal office in New York City. The Company operates plants situated in seven States of the Union; however, this proceeding is concerned solely with the Company's plant at Hastings-on-Hudson, New York, which manufactures electric wires, cables and kindred products. During the past year the Hastings-on-Hudson plant used raw materials consisting of copper, rubber, tin and lead of a value exceeding \$1,000,000, 92 percent of which was shipped to the plant from points outside the State of New York. During the same period of time, the sales of the Company's finished products exceeded \$1,000,000, 75 percent of which was shipped from the aforesaid plant to points outside the State of New York. The Company is almost entirely engaged in war work.

With respect to the operations of the Hastings-on-Hudson plant the Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, affiliated collective bargaining representative of its employees on three separate admitting to membership employees of the Company.

International Brotherhood of Electrical Workers, Local B-1243, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

During the year 1941 the Company recognized the IBEW as the sole collective bargaining representative of its employees on three separate occasions when it signed contracts with that labor organization. On November 13, 1942, the Company and the IBEW signed a closed-shop contract, which by its terms became effective on July 1, 1942, and was to continue in effect for 1 year, and thereafter for successive periods of 1 year, unless terminated or amended upon sixty (60) days written notice prior to the anniversary date. By letter dated April 12, 1943, the IBEW notified the Company of its desire to open negotiations for a new contract. Thereafter, on May 20, the IBEW presented the Company with a list of 15 demands relating to wages, hours, and working conditions. On June 3, the IBEW and the Company con-

ferred and reached a tentative agreement with respect to some of the demands. According to the testimony of the business manager of the IBEW, an oral agreement between the parties was reached on that date extending the 1942 contract until negotiations were concluded regarding the IBEW's demands and a new contract embodying the modifications and amendments had been signed. Subsequently, on July 1, 7, and 21, representatives of the IBEW negotiating committee and the Company held conferences at which an understanding was reached on all matters except two of the IBEW's demands. At a meeting of the IBEW held on August 19, approval by the membership was given to the partial oral agreement reached between the Company and the IBEW negotiating committee. The following day, the IBEW presented a draft of a proposed agreement to the Company for execution. The Company refused to sign this draft on the ground that there was then pending before the Board a representation proceeding instituted by the U. E., the present petitioner. The Company takes the position that it will not sign a contract with any union until that organization has been certified by the Board in an appropriate unit. It was stipulated upon the record that on July 7, 1943, the U. E. advised the Company that it represented a majority of the Company's employees and requested the Company to stop negotiating and refrain from signing a contract with any union until a legally constituted bargaining agency had been duly certified by the Board. On July 13 the U. E. filed its petition herein.

The IBEW contends that its contract of November 13, 1942, constitutes a bar to a present determination of representatives and therefore moves for the dismissal of the petition. The reasons advanced by the IBEW for its contention may be summarized as follows: (a) the 1942 contract automatically renewed itself for another year on July 1, 1943, "with the exception of certain minor modifications which the Company agreed to, but has not yet put into writing . . ." and, (b) even if the 60-day automatic renewal clause in the 1942 contract did not take effect on May 1, 1943, said written contract was renewed by the agreement of the parties on June 3, a month prior to notice of the U. E.'s claim.

The IBEW attempts to avoid the principle of the *Eicor* case,<sup>2</sup> that unexecuted agreements do not bar an investigation of representatives, by contending that the basic agreement between the Company and itself was already in writing and signed when it was renewed at a time prior to any claim made by the U. E. What is not reduced to writing, so the IBEW argues, "are only some modifications which do not affect the basic agreement between the Employer and the Intervening Union." The record is clear, however, that the demands made

<sup>2</sup> *Matter of Eicor Inc.*, 46 N. L. R. B. 1035.

upon the Company by the IBEW concern themselves with questions such as a general wage raise, a demand for time and one-half for the sixth working day, a 15-day sick leave policy, equal pay for women for equal work, 4 hours call-in pay, and other problems of a similar substantial and basic nature.

The U. E.'s brief stresses the point that the IBEW by its letter of April 12, 1943, giving notice of its intention to renegotiate the contract, prevented the automatic renewal provision of the contract from taking effect. This argument is consonant with the Board's decision in the recent *Memphis Furniture* case.<sup>3</sup> As we have frequently held in other decisions, an oral arrangement to abide by the terms of a former contract pending negotiations for the completion of a new contract does not operate as a bar to an investigation and determination of representatives upon a petition of a rival union claiming to represent the employees involved.<sup>4</sup> Moreover, we note here that such oral agreement was for an indefinite period of time, and as such no bar.<sup>5</sup>

We therefore find that the contract of November 13, 1942, and its purported renewal do not constitute a bar to a present determination of representatives, and hereby deny the IBEW's motion to dismiss the petition. A statement of a Board agent, introduced into evidence at the hearing, indicates that the U. E. represents a substantial number of employees in the units hereinafter found appropriate.<sup>6</sup>

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 UNITS

The parties agree, and we find, that all hourly rated production and maintenance employees of the Company at its Hastings-on-Hudson plant, including factory clerical employees, hourly rated chauffeurs, a salaried machine operator named Elijah Vedder, learners and inexperienced employees, and set-up men, but excluding all foremen, subforemen, working foremen, the scrap boss, the chief office clerk, the chief attendant in the steam plant, and the salaried chauffeur

<sup>3</sup> *Matter of Memphis Furniture Mfg Co.*, 51 N. L. R. B. 1447.

<sup>4</sup> *Matter of Central Pattern and Foundry Co.*, 51 N. L. R. B. 400; also *Matter of Welin Davit and Boat Corporation*, 51 N. L. R. B. 1221

<sup>5</sup> See *Matter of The Western Foundry Company*, 41 N. L. R. B. 301; also *Matter of Philadelphia Dairv Products Co, Inc*, 36 N. L. R. B. 737.

<sup>6</sup> The Acting Regional Director reported that the U. E. submitted 997 application cards, 908 of which bore apparently genuine original signatures; that the names of 908 persons appearing on the cards were listed on the Company's pay roll of July 25, 1943, which contained the names of 1,655 employees in the appropriate unit; and that the cards were dated as follows: 1 in May 1943; 384 in June, 479 in July, 43 in August, and 1 undated.

The Company's pay roll of July 25, 1943, lists 18 persons as guards. The U. E. submitted 10 cards bearing the signatures of people whose names are listed as guards.

The IBEW submitted no authorization cards but relies upon its contract with the Company as evidence of its interest in this proceeding.

who drives for the Company executives, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status 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.<sup>7</sup>

There remains for consideration but one further classification of personnel, i. e., guards or watchmen. With respect to this category, the IBEW would incorporate them into the main production and maintenance unit, the Company would establish them as a separate unit, and the U. E., while preferring a single unit, defers to the Board's policy. The record establishes that the guards are members of the Auxiliary Military Police, uniformed and armed. They are hourly rated and hence were considered to be part of the prior contract unit. They direct traffic, patrol the premises, check the time-clock system, and report infractions of Company rules to their foreman. There is a shift boss in charge of each of the three shifts of guards. The shift bosses do not have authority to hire or discharge, but make reports, which carry substantial weight, to the foreman of guards, on the efficiency of the guards who work with them on their shifts.

The Board's policy with respect to plant-protection employees who are members of the Auxiliary Military Police or the Coast Guard Reserve has been laid down in the recent *Dravo* case.<sup>8</sup> In accordance with the decision in that case, militarized plant-protection employees are required to be established in a unit separate and apart from all other employees. Accordingly, we further find that all guards of the Company, but excluding the foreman of guards, shift bosses and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a separate unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

The IBEW contends that the pay-roll day nearest the date of the filing of the petition should be used to determine eligibility to vote. The U. E. and the Company contend that a current pay roll should be used for that purpose. Inasmuch as no persuasive reasons appear for departing from our usual practice, we shall direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding

<sup>7</sup> The unit found appropriate is substantially the same as the unit in the contract mentioned above.

<sup>8</sup> See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

### DIRECTION OF ELECTIONS

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 Anaconda Wire & Cable Company, Hastings-on-Hudson, New York, separate elections 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 Second 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 units 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 those employees who have since quit or been discharged for cause, to determine whether they desire to be represented by United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or by International Brotherhood of Electrical Workers, Local B-1243, affiliated with the American Federation of Labor,<sup>9</sup> for the purposes of collective bargaining, or by neither.

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

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\* Requests by the unions to appear on the ballot as follows is hereby granted :

a) U. E.-C I. O.

United Electrical, Radio & Machine Workers of America, C. I. O.

b) I. B. E. W.-A. F. L

Local B-1243, International Brotherhood of Electrical Workers.