

In the Matter of MUNCIE WATER WORKS COMPANY *and* INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL No. 1112, A. F. OF L.

In the Matter of MUNCIE WATER WORKS COMPANY *and* LOCAL 34, UNITED CONSTRUCTION WORKERS DIVISION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA AND INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, LOCAL No. 1112, A. F. OF L.

Cases Nos. 9-R-1183 and 9-RE-11 respectively.—Decided October 5, 1943

Mr. E. A. Geehan and Mr. C. E. Stewart, of Muncie, Ind., for the Company.

Mr. George McMahon, of Muncie, Ind., for the Hod Carriers.

Mr. Laurence S. Filburn, of Indianapolis, Ind., and Mr. Max Ren-derquist, of Muncie, Ind., for Local 34.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon separate petitions duly filed by International Hod Carriers, Building and Common Laborers Union of America, Local No. 1112, A. F. of L., herein called the Hod Carriers, and Muncie Water Works Company, Muncie, Indiana, herein called the Company, alleging that questions affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Muncie, Indiana, on September 14, 1943. The Company, the Hod Carriers, and Local 34, United Construction Workers, Division of District 50, United Mine Workers of America, herein called Local 34, appeared, participated, and were afforded

full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Muncie Water Works Company is an Indiana corporation with its principal place of business at Muncie, Indiana, where it is engaged in supplying water to the city of Muncie. The Company sells about 1,168,000,000 gallons of water annually, all of which is secured from two local rivers and driven wells. The Company services numerous large war plants in Muncie.

II. THE ORGANIZATIONS INVOLVED

Local 34, United Construction Workers, Division of District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

International Hod Carriers, Building and Common Laborers Union of America, Local No. 1112, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 1, 1943, the Hod Carriers requested of the Company recognition as the exclusive bargaining representative of the Company's employees. The Company refused this request.

On May 1, 1941, the Company and Local 34 entered into an exclusive collective bargaining contract. On June 2, 1942, they entered into a supplemental contract. The supplemental agreement provides that it shall remain in effect until May 1, 1943, and from year to year thereafter unless notice of a desire to terminate or for changes is given by either party thereto at least 30 days prior to any annual expiration date. Local 34 contends that its contract with the Company is a bar to the instant proceeding. On March 29, 1943, Local 34 notified the Company of its desire for changes in the contract. Inasmuch as Local 34 made its demands for changes upon the Company prior to April 1, 1943, the date upon which the contract would have automatically renewed itself, we find that the contract does not constitute a bar to a determination of representatives at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Hod Carriers represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

We find, in agreement with the parties, that all employees of the Company, excluding clerical employees and all 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.²

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.

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 Muncie Water Works Company, Muncie, Indiana, 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 Ninth 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,

¹ The Field Examiner reported that the Hod Carriers presented 9 membership application cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of August 26, 1943. There are approximately 17 employees in the appropriate unit. Local 34 did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

² This is the same unit provided for in the contract between the Company and Local 34.

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 they desire to be represented by International Hod Carriers, Building and Common Laborers Union of America, Local No. 1112, affiliated with the American Federation of Labor, or by Local 34, United Construction Workers, Division of District 50, United Mine Workers of America, for the purposes of collective bargaining, or by neither.