

In the Matter of OAKES AND BURGER Co. and UNITED STEELWORKERS OF
AMERICA, CIO

Case No. 3-R-662.—Decided October 26, 1943

Mr. Charles R. Diebold, of Buffalo, N. Y., for the Company.

Mr. Ray McLaughlin, of Dunkirk, N. Y., for the Union.

Miss Olive N. Barton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by the United Steelworkers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Oakes and Burger Co., Cattaraugus, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Gowanda, New York, on September 22, 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. At the hearing, the Company, in substance, moved to dismiss the petition. For reasons indicated below, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Opportunity was afforded all parties 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

Oakes and Burger Co. is a New York corporation engaged at its Cattaraugus, New York, plant in the manufacture of sheet metal milk and dairy equipment. The value of raw materials shipped to this plant during the 12-month period ending August 31, 1943, was ap-

proximately \$60,000, about 75 percent of which was shipped from points outside the State of New York. During the same period the Company manufactured finished products of the approximate value of \$400,000, about 60 percent of which was sold and 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

United Steelworkers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 20, 1943, the Union lost a consent election in which its name was the only one on the ballot, by a vote of 33 to 28. On August 23, 1943 the Union filed the petition in the present proceeding. The Company contends that the petition is untimely, because approximately only 4 months have elapsed since the consent election. We find no merit in this contention. The Union appears to have been designated since the consent election by approximately 75 percent of the employees in the appropriate unit, a showing which is substantially better than that made in the consent election.¹

A statement of a Field Examiner of the Board, introduced in 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 substantial agreement with a stipulation of the parties, that all production and maintenance employees of the Company, including watchmen, stock clerks, and firemen, but excluding clerical employees, engineers, and any supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the

¹ Cf. *Matter of Southport Petroleum Company of Delaware* 39 N. L. R. B. 257; *Matter of Automatic Products Company*, 40 N. L. R. B. 941; and *Matter of General Aircraft Corporation*, 49 N. L. R. B. 916

² The Field Examiner reported that the Union submitted 51 authorization cards, all dated in August 1943, and all bearing apparently genuine original signatures of persons whose names appear on the Company's pay roll of August 18, 1943, which contains the names of 63 persons in the appropriate unit.

status of employees or effectively recommend such action,³ 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 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 Oakes and Burger Co., Cattaraugus, 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

³ The parties agreed that three so-called working foremen should be included. The record shows that they do not have or exercise the supervisory authority set forth above. They are therefore deemed included in the unit