

In the Matter of L. S. BRACH MANUFACTURING CORP. and UNITED  
PAPER, NOVELTY & TOY WORKERS INTERNATIONAL UNION, AFFILIATED  
WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

*Case No. 2-R-4158.—Decided November 10, 1943*

*Mr. Milton M. Unger*, of Newark, N. J., for the Company.

*Mr. Samuel L. Rothbard*, of Newark, N. J., for the CIO.

*Mr. Thomas Parsonett*, of Newark, N. J., for the IBEW.

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

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Paper, Novelty & Toy Workers International Union, affiliated with the Congress of Industrial Organizations, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of L. S. Brach Manufacturing Corp., Newark, New Jersey, herein called the Company,<sup>1</sup> the National Labor Relations Board provided for an appropriate hearing upon due notice before Richard J. Hickey, Trial Examiner. Said hearing was held at Newark, New Jersey, on October 11, 1943. The Company, the CIO, and International Brotherhood of Electrical Workers, Local 1159B, AFL, 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. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

L. S. Brach Manufacturing Corp. is a New Jersey corporation having its principal office and plants in Newark, New Jersey. The

<sup>1</sup> A motion to amend the petition so as to show the correct designation of the Company was granted at the hearing.

Company is engaged in the manufacture, sale, and distribution of electrical protector apparatus. It is totally engaged in the production of materials for war purposes. The principal raw materials purchased by the Company consist of steel, brass, plastics, fibre, and paint. During the year ending September 30, 1943, the Company's purchases of such raw materials amounted to approximately \$1,000,000, 90 percent of which was shipped to the Newark plants from places outside the State of New Jersey. During the same period of time, the sales of the Company's finished products, radio antennae and accessories, exceeded \$1,000,000, 90 percent of which was shipped from the plants in Newark to points outside the State of New Jersey.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

United Paper, Novelty & Toy Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Electrical Workers, Local 1159B, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On July 13, 1943, a representative of the CIO informed J. C. Underwood, the Company's personnel manager, that the CIO represented a majority of the Company's employees and that the CIO intended to file a petition with the Board. Underwood replied that the Company would recognize the Union if it won a Board Election. At the hearing, Underwood denied that he has authority to recognize or negotiate with any union, or that he has authority to speak for the Company on labor relations; however, he stated that he related the conversation to the Company's executive vice president within a day or two after its occurrence. The IBEW contends that no question concerning representation is raised in that the petitioner's claims were not presented to the proper persons authorized to handle labor matters on behalf of the Company. Since the petitioner's claims were actually communicated to the Company, we find it unnecessary to determine whether or not Underwood was properly authorized to receive such claims and therefore find no merit in the IBEW's contentions.

In the light of our finding above, a contract for 1 year between the Company and the IBEW, containing an automatic renewal clause extending the contract from year to year unless written notice to termi-

nate is given by either party 30 days prior to the expiration date (August 17, 1943), is not a bar to a present determination of representatives. It is likewise apparent that the contention of the IBEW that the CIO has not made a substantial showing of representation in this proceeding is without merit. As will be indicated below, the CIO has made a showing of 28 percent which is adequate in view of the maintenance of membership provision in the IBEW's contract.<sup>2</sup>

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 UNIT

The parties agree and we find that all employees on the hourly pay roll of the Company including drivers, but excluding guards, night watchmen, clerical employees, engineers, firemen, 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.

#### 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 payroll 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

<sup>2</sup> See *Matter of Sayles Finishing Plants, Inc.*, 49 N. L. R. B. 532.

<sup>3</sup> The Regional Director reported that the CIO submitted 175 membership cards, 137 of which bore apparently genuine original signatures, and bore the names of persons listed on the Company's pay roll of August 22, 1943, which contained the names of 478 employees in the alleged appropriate unit. The cards were dated between June and September 1943.

<sup>4</sup> The IBEW relies upon its contract as evidence of its interest in this proceeding.

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with L. S. Brach Manufacturing Corp., Newark, New Jersey, 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 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 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 election, to determine whether they desire to be represented by United Paper, Novelty & Toy Workers International Union, affiliated with the Congress of Industrial Organizations, or by International Brotherhood of Electrical Workers, Local 1159B, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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