

In the Matter of BIRD & SON (CARTON, CONTAINER AND PAPER DIVISION) and LOCAL INDUSTRIAL UNION, #1330 (CIO)

*Case No. 1-R-1575.—Decided November 18, 1943*

*Messrs. Richard J. Walsh and William J. Speers, Jr.*, of Boston, Mass., for the Company.

*Mr. Francis Carmichael*, of Boston, Mass., for the CIO.

*Mr. Dennis P. O'Leary*, of Norwood, Mass., for the Independent.

*Miss Frances Lopinsky*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon a petition duly filed by Local Industrial Union, #1330 (CIO), herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Bird & Son, Inc., (Carton, Container and Paper Division), East Walpole, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John W. Coddair, Jr., Trial Examiner. Said hearing was held at Norwood, Massachusetts, on September 17, 1943. The Company, the CIO, and Eastern Building and Roofing Employees Union, herein called the Independent, 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

Bird & Son, Inc., is a Massachusetts corporation whose main office and principal place of business is located at East Walpole, Massachusetts. It maintains three plants at East Walpole, Massachusetts,

for the manufacture of paper, paper boxes, and cartons; two plants at Norwood, Massachusetts, for the manufacture of roofing material and floor covering, respectively; one plant at Phillipsdale, Rhode Island, for the manufacture of felt and insulating material, one at Shreveport, Louisiana, and one at Chicago, Illinois, for the manufacture of roofing material. At the Company's plants in East Walpole, Massachusetts,<sup>1</sup> the approximate purchases amounted to \$1,400,000 during the first 6 months of 1943, of which 40 percent was received from outside the Commonwealth of Massachusetts. The sales during the same period amounted to \$3,000,000, of which approximately 55 percent was shipped beyond the Commonwealth of Massachusetts.

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

## II. THE ORGANIZATIONS INVOLVED

Local Industrial Union, #1330, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Eastern Building and Roofing Employees Union is a labor organization admitting to membership employees of the Company.

## III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

The CIO, by letter dated August 7, 1943, requested recognition as sole bargaining representative of the Company's East Walpole plants. On August 12 the Company replied, denying recognition to the CIO on the grounds (1) that on July 16, 1943, it executed a contract with the Independent which does not expire until July 16, 1944, and (2) that the unit requested by the CIO is inappropriate. The CIO acknowledges the existence of the contract as binding upon all other employees of the Company in the New England area, but contends it is no bar to a present determination of representatives for the East Walpole employees. The CIO contends that the employees of the three East Walpole plants constitute a unit appropriate for the purposes of collective bargaining separate and apart from the multiple plant unit consisting of all the Company's plants in the New England area, which the Company and the Independent contend is the appropriate one. Since, in our opinion, the contract of July 16, 1943, is a bar to any present determination of representatives, we shall not at this time examine or pass upon the question of what constitutes an appropriate unit or units of the Company's employees.

<sup>1</sup> The Carton, Container, and Paper Division.

The Independent consists of four locals, each having the following jurisdiction:

- Local #1—Norwood roofing plant
- Local #2—Norwood floor covering plant
- Local #3—East Walpole plants (3)
- Local #4—Phillipsdale plant

The Independent was formed in 1937 among the employees of the Norwood roofing plant and grew by accretion until 1941 when it took its present form. Contracts have been negotiated yearly between it and the Company.

The governing board of the Independent is made up of three officers of each of the four locals. This board has sole authority to negotiate contracts for the four locals and to sign them upon ratification of the general membership. The Independent's constitution does not describe how the contracts shall be signed; in practice they have been executed by the presidents of each of the locals, presumably acting in behalf of the board.<sup>2</sup>

Negotiations for a 1943-1944 contract began sometime in April 1943. Subsequently, an instruction ballot was issued to members of Local #3 concerning possible affiliation of that Local with some national organization. The results of this ballot indicated that 85 percent of the members desired CIO affiliation.<sup>3</sup> On June 19, 1943, the CIO issued a charter to the group but instructed the officers of Local #3 to retain their places on the board. The question of their right to take part in the negotiations was raised at a meeting of the board, whereupon one representative of Local #3 explained, without contradiction from his colleagues, that the CIO affiliation was for advisory purposes only.<sup>4</sup> Thereafter, representatives of Local #3 took an active part in the negotiations, giving particular attention to those matters which concerned only the East Walpole plants. Nineteen of its members participated in the general meeting of the Independent at which the contract was ratified. On July 16, 1943, the contract was signed by the Company and by the presidents of Locals #1, #2, and #4, but the president of Local #3 refused to sign the ratified agreement, asserting for the first time that the Local had withdrawn from the Independent. The CIO

<sup>2</sup> For example, the 1943 contract recites that the Independent "has caused this instrument to be signed and sealed by the four presidents of their respective locals, they being duly authorized to enter into and effect this agreement . . ." There is no separate signature for the board.

<sup>3</sup> No resolution to dissolve Local #3 was passed at this time nor at any time prior to the signing of the contract.

<sup>4</sup> Local #2 is affiliated with the Confederated Unions of America, which acts in an advisory capacity, but it retains its identity as a Local in the Independent and its authority to make decisions without CUA confirmation. There is evidence to the effect that the CIO informed the board that Local #3 was but an observer at the board's meeting and would not sign a contract.

did not demand recognition from the Company until August 7, 1943, 3 weeks after the contract had been executed by three of the joint signatories for the board.<sup>5</sup> Although it is true that Local #3 is no longer active,<sup>6</sup> we find that the Independent is an existing labor organization capable of administering the contract which it negotiated. We further find that that contract is a bar to the present determination of representatives.<sup>7</sup> This finding, however, in no way prejudices the right of the CIO to renew its petition within a reasonable time before the said contract is about to expire.

### ORDER

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Bird & Son (Carton, Container, and Paper Division), East Walpole, Massachusetts, filed by Local Industrial Union, #1330 (CIO), be, and it hereby is, dismissed.

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

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<sup>5</sup> Cf. *Matter of Eicor*, 46 N. L. R. B. 1035

<sup>6</sup> It is clear that at the time of the signing of the contract Local #3 was still active: the resignations of two of Local #3's representatives were not received by the governing board until August 13, 1943, the resignation of a third representative was never tendered; the "last meeting of Local #3 and the first meeting of the CIO" was advertised for August 19, 1943; and the bulk of the CIO's membership cards were signed in August 1943.

<sup>7</sup> Cf. *Matter of Central Pattern and Foundry Company*, 51 N. L. R. B. 400, in which the schism became apparent to the Company prior to the signing of the contract. The schism was such that the continued majority of either faction was rendered doubtful, whereas in the instant case only a small portion of the Independent's membership has been affected.