

In the Matter of FRANK CROSS AND JOSEPHINE CROSS, CO-PARTNERS,  
DOING BUSINESS AS ACME RUST PROOF COMPANY and ACME RUST  
PROOF COMPANY PLATERS AND HELPERS UNION

*Case No. 14-R-743.—Decided January 11, 1944*

*Mr. Ben L. Shifrin and Mr. Frank W. Cross, of St. Louis, Mo., for  
the Company.*

*Mr. Charles J. Wagner, of St. Louis, Mo., for the Independent.*

*Mr. Joseph A. Waldron, of St. Louis, Mo., for the A. F. of L.*

*Miss Marcia Hertzmark, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Acme Rust Proof Company Platers and Helpers Union, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Frank Cross and Josephine Cross, Co-partners, doing business as Acme Rust Proof Company, St. Louis, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry G. Carlson, Trial Examiner. Said hearing was held at St. Louis, Missouri, on November 23, 1943. The Company, the Independent, and Metal Polishers, Buffers, Platers and Helpers International Union; Local No. 13, A. F. of L., herein called the A. F. of L., 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

Acme Rust Proof Company, a Co-partnership comprised of Frank Cross and Josephine Cross, has its principal office and place of business  
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at St. Louis, Missouri. It is primarily engaged as a subcontractor in the plating of bomb and plane parts. During the year 1942 the Company purchased about \$19,900 worth of raw materials, approximately 37 percent of which was shipped to its plant from points outside the State of Missouri. During the same period the Company's gross receipts totalled \$68,700, of which \$3,700 was received for work performed on products shipped outside the State of Missouri.

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

## II. THE ORGANIZATIONS INVOLVED

Acme Rust Proof Company Platers and Helpers Union, unaffiliated, and Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 13, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On February 20, 1941, the Company and the A. F. of L. entered into a 1-year collective bargaining contract providing for a closed shop and for automatic renewal unless notice should be given by either party at least 30 days prior to the expiration of the contract, stating what changes were desired. Upon its expiration, the contract was renewed for another year. In January 1943, the A. F. of L. notified the Company of its desire to negotiate wage changes. No agreement having been reached by the parties and an attempt at conciliation having failed, the wage issue was certified to the National War Labor Board on May 1, 1943. Although only the problem of wages had been raised during the attempted conciliation there was also presented to the National War Labor Board a question as to whether or not the contract between the parties was automatically renewed as to all provisions except wages.<sup>1</sup> The A. F. of L. contends that its contract was automatically renewed and is in effect except as to the wage provisions, and that the existence of the contract is a bar to the present proceeding. The Company claims that the contract was terminated on its expiration date.

On May 25, 1943, 13 of the 14 employees within the unit covered by the contract signed a notice, directed to the Company, stating that they were no longer members of the A. F. of L., and requesting that

<sup>1</sup> On September 15, 1943, the Regional War Labor Board issued a directive order providing for a change of wage schedules and also providing that the Company shall continue to recognize the A. F. of L. as the accredited collective bargaining agent for its employees unless and until the National Labor Relations Board shall have certified another union as such representative. This decision was appealed by the Company and the matter was still pending at the time of the hearing herein.

the Company bargain with them "or with the union that we intend to form." In a letter dated August 3, 1943 the same number of employees notified the Company of the formation of the Independent and requested that the Company start negotiating with it for a contract. The Company replied that, since the A. F. of L. claimed to represent its employees, the Company would not deal with the Independent until the question of representation was settled. The Independent filed a petition for certification with the Board on August 9, 1943.

The A. F. of L. had not for some time prior to January 1943, and has not since, made any attempt to enforce the closed-shop provision of its contract. In January 1943, only 5 of the 12 persons then employed within the unit were members of the A. F. of L.; by September it had only 3 members in the plant and at the time of the hearing it had none. It presented no grievances after January 1943, nor in any way represented any employee of the Company except in connection with the matter pending before the National War Labor Board.

We deem it unnecessary to decide the question as to whether the contract between the Company and the A. F. of L. is now in existence, since substantially the entire membership of the A. F. of L. employed by the Company withdrew from that organization in May 1943 and, upon their own initiative, formed another organization, and since, at the time of the hearing herein, there were apparently no employees of the Company who desired to be represented by the A. F. of L. Moreover, even if we assume that the contract is in existence, it will, by its terms, expire in less than 2 months. Under these circumstances, we find that the contract between the Company and the A. F. of L. does not constitute a bar to this proceeding.<sup>2</sup>

A statement of the Regional Director introduced in evidence indicates that the Independent represents a substantial number of employees in the unit hereinafter found to be 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 Independent, the A. F. of L., and the Company agree, and we find, that all employees of the Company, excluding clerical em-

<sup>2</sup> See *Matter of Sunshine Mining Company, Manganese Division*, 48 N. L. R. B. 301; *Matter of National Lead Company*, 45 N. L. R. B. 182; and *Matter of Sealed Power Corporation and the Accuralite Co.*, 41 N. L. R. B. 1225.

<sup>3</sup> The Regional Director reported that the Independent submitted a petition dated August 3, 1943, addressed to the Company and requesting bargaining. The petition contained the signatures of 13 employees, 10 of which appear to be genuine, original signatures of persons whose names appear on the Company's pay roll of September 3, 1943. The pay roll contains the names of 17 persons.

ployees 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 pay-roll period immediately preceding the date of the Direction of Election, subject to the limitations and additions set forth in the Direction.<sup>4</sup>

#### 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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Frank Cross and Josephine Cross, Co-partners, doing business as Acme Rust Proof Company, St. Louis, Missouri, 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 Fourteenth 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 of the Company 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 any who have since quit or been discharged for cause and who have not been reinstated or rehired prior to the election, to determine whether they desire to be represented by Acme Rust Proof Company Platers and Helpers Union, or by Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 13, A. F. of L., for the purposes of collective bargaining, or by neither.

<sup>4</sup> While the A. F. of L. has made no showing of membership in the plant, in view of the contractual relationship which has existed between it and the Company, we shall direct that it be placed on the ballot.