

In the Matter of BRANICK MANUFACTURING COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS, LOCAL 824, A. F. OF L.

In the Matter of G. E. BRANICK, DOING BUSINESS AS BRANICK COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS, LOCAL 824, A. F. OF L.

*Cases Nos. 18-R-811 and 18-R-824 respectively.—Decided January 28, 1944*

*Mr. Franklin J. Van Osdel, of Fargo, N. D., for the Companies.*

*Mr. W. W. Murrey, of Fargo, N. D., for the Union.*

*Mr. Jack Mantel, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petitions duly filed by International Union, United Automobile Workers, Local 824, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Branick Manufacturing Company, Fargo, North Dakota, herein called the Corporation, and C. E. Branick, doing business as Branick Company, Fargo, North Dakota, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Fargo, North Dakota, on December 6, 1943. The Corporation, the Company, and the Union 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:

54 N. L. R. B., No 144.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANIES

Branick Manufacturing Company is a North Dakota corporation with its principal office and place of business in Fargo, North Dakota, where it is engaged in the manufacture of tire spreaders for use in the repairing and inspection of tires. During the calendar year 1942, the Corporation purchased raw materials consisting principally of steel and gray iron castings, amounting in value to approximately \$45,000, of which in excess of 90 percent was shipped to the Corporation from points outside the State of North Dakota. During the same period, the finished products amounted in value to approximately \$145,000, of which approximately 90 percent was shipped to points outside the State of North Dakota.

C. E. Branick, an individual, doing business as Branick Company, is engaged at Fargo, North Dakota, in the sale of tires and tubes, belting, tire vulcanizing and repair materials, tire accessories, batteries, and used electric motors. The Company is also engaged in vulcanizing and tire repair service. During the calendar year 1942, the Company purchased raw materials consisting of rubber compounds, cord fabric, and tire and vulcanizing accessories, amounting in value to approximately \$60,000, of which approximately 85 percent was shipped to the Company from points outside the State of North Dakota. During the same period, sales amounted to approximately \$60,000, of which from 10 to 15 percent was made to customers outside the State of North Dakota. Also for the same period, the value of the vulcanizing and tire repair services rendered by the Company amounted in value to approximately \$60,000 of which from 10 to 15 percent was performed for customers outside the State of North Dakota.

We find that the Corporation and the Company are engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers, Local 824, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Corporation and the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Corporation and the Company have refused to grant recognition to the Union as the exclusive bargaining representative of their employees until the Union has been certified by the Board in an appropriate unit.

Statements of the Regional Director, introduced into evidence at the hearing, indicate that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Corporation and the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The Corporation, the Company, and the Union agreed as to the general constituency of the appropriate unit. The Corporation and the Company, however, contend that a separate bargaining unit for each plant is appropriate, whereas the Union contends that the employees of both plants constitute a single appropriate unit.

Since 1917, C. E. Branick has been engaged in the business of vulcanizing and sale of tires and tire accessories in Fargo, North Dakota. In 1928 the Corporation was organized, at which time Branick sold to the Corporation patents to a tire spreader which he had invented. Branick owns 33 $\frac{1}{3}$  percent of the stock of the Corporation, and is its president and manager in charge of operations. Branick is also in direct control of business operations of the Company. The plants of the Corporation and the Company are on the same street, separate by an alleyway. There is only one office, located in the plant of the Company, from which Branick directs the operations of both the Corporation and the Company. The bookkeeping and pay-roll matters of the Corporation are maintained by Northwest Audit Company, which office is apart from both of the plants. The Northwest Audit Company, whose president is on the Board of Directors of the Corporation, also does accounting work for the Company. There is only one listing in the local telephone directory for both plants under the name "Branick Company." Although the pay checks of the employees of each company are issued separately, the employees of both companies punch the same time clock. Approximately the same pay schedules were in effect until the latter part of November 1943, when the Corporation was authorized to increase its rates of pay.

The record shows that several employees do work for both companies. A janitor-watchman, on the pay roll of the Corporation, performs his duties for both plants. A plant maintenance employee on

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<sup>1</sup> The Regional Director reported that the Union submitted 15 authorization cards, 6 of which bore apparently genuine signatures of persons who were listed on the Corporation's pay roll of November 23, 1943, which pay roll contained the names of 6 employees in the appropriate unit; the cards were dated between July and August 1943. The Regional Director further reported that the Union submitted 13 authorization cards, 5 of which bore apparently genuine signatures of persons who were listed on the Company's pay roll of November 23, 1943, which pay roll contained the names of 11 employees in the appropriate unit the cards were dated between July and November 1943.

the pay roll of the Corporation, also spends part of his time repairing motors and performing maintenance duties at the Company's plant. The time spent by this employee in repairing motors is kept separately; but the time spent in plant maintenance is not. An assistant foreman, on the pay roll of the Company, spends from 5 to 10 percent of his time doing clerical work for the Corporation. A shipping clerk, on the pay roll of the Company, who operates a delivery truck, spends 50 percent of his time making deliveries for the Corporation. C. E. Branick, as president and manager, is the only supervisory employee of the Corporation, and, as stated above, is also in direct charge of the operations of the Company. In view of the foregoing circumstances, we find that the employees of both the Corporation and the Company constitute a single appropriate unit.<sup>2</sup>

We find that all production and maintenance employees of the Corporation and the Company, excluding executives, office and clerical employees, foremen, assistant foremen, and all other 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 single 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 herein, subject to the limitations and additions set forth in the Direction.<sup>3</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 Branick Manufacturing Company, Fargo, North Dakota, and C. E. Branick, doing business as Branick Company, Fargo, North Dakota, an election by secret ballot shall be conducted as early as possible, not later than thirty (30) days from the date of this Direction, under the direction

<sup>2</sup> *Matter of Aaron Ferer & Sons, Inc and Wiping Materials, Inc.*, 53 N. L. R. B. 138; *Matter of Arnolt Motor Company, Inc.*, and *S. H. Arnolt, d/b/a Atlas Steel & Tube Company*, 52 N. L. R. B. 149.

<sup>3</sup> At the hearing, the Union requested that it be designated on the ballot as "United Automobile Workers, Local 824, A. F. of L." This request is hereby granted.

and supervision of the Regional Director for the Eighteenth 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 International Union, United Automobile Workers, Local 824 affiliated with the American Federation of Labor, for the purposes of collective bargaining.