

In the Matter of LETELLIER-PHILLIPS PAPER CO., INC. and UNITED
PAPER AND WAREHOUSE WORKERS UNION, UNAFFILIATED

Case No. 15-R-1021.—Decided February 5, 1944

Messrs. Paul J. Ganucheau and I. K. Brennecke, of New Orleans, La., for the Company.

Mr. Joseph August, of New Orleans, La., for the Independent.

Mr. Howard Goddard, of New Orleans, La., for the ILWU.

Mr. William R. Cameron, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Paper and Warehouse Workers Union, unaffiliated, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Letellier-Phillips Paper Co., Inc., New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Lawrence H. Whitlow, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on November 16, 1943. The Company, the Independent, and International Longshoremen's and Warehousemen's Union, Local 207, herein called the ILWU, 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 ILWU moved the dismissal of the petition. For reasons hereinafter stated, this motion is denied. 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

Letellier-Phillips Paper Co., Inc. is a Louisiana corporation doing business in New Orleans, Louisiana, where it is engaged in the purchase, cleaning, or otherwise processing, and resale of waste paper and rags. During the first 9 months of 1943, the purchases made by the Company amounted to approximately \$309,000, and were locally made. During the same period its sales amounted to approximately \$479,000, and were made, for the most part, to several companies doing business at Bogalusa and New Orleans, Louisiana. Approximately 90 percent of the Company's orders are war orders. The Company concedes that its business affects commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Paper and Warehouse Workers Union is an unaffiliated labor organization, admitting to membership employees of the Company.¹

International Longshoremen's and Warehousemen's Union, Local 207, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 29, 1943, the Independent, by letter, requested that the Company recognize it as the exclusive bargaining representative. The Company replied, by letter, on September 30, 1943, that it could not grant such recognition because for several years it had had a contract with the ILWU, and referred the Independent to the Board.

The ILWU and the Company have been in contractual relationship for several years. The latest of a series of written agreements between them was entered into on July 1, 1942, and was effective, by its terms, for the period of 1 year. On June 30, 1943, the ILWU, by letter, notified the Company that it desired to negotiate a new agreement, and proposed that the existing agreement be extended pending such negotiations. Subsequently, the Company's vice-president orally agreed with the representative of the ILWU to extend the contract until such time as a new agreement had been reached. The ILWU contends that its contract, as thus extended, constitutes a bar to a present determination of representatives. The record, however,

¹ The ILWU among other grounds in support of its motion to dismiss, contends that the Independent is not a labor organization within the meaning of the Act. We find this contention to be without merit.

clearly indicates that since the expiration of the written contract the ILWU has been pressing demands for new terms which the Company has not accepted. The record further discloses that after receiving notification of the representation claims of the Independent, the Company informed the ILWU that it would not bargain with either union until such time as one or the other had been certified by the Board. We have previously held that a written contract orally extended pending negotiation of a new agreement does not constitute a bar.² Moreover, the Company here contends that it was not its intention to extend the contract indefinitely, but only during the pendency of negotiations, and that, in view of the conflicting claims to representation which have arisen, it considers the contract as having terminated. In view of all the circumstances disclosed by the record herein, we find that the above-mentioned contract between the ILWU and the Company does not preclude a determination of the collective bargaining representative at this time.

The ILWU further contends that the Board is precluded from proceeding in this case by virtue of a limitation upon the expenditure of Board funds contained in the current Appropriation Act.³ The provision in question clearly indicates, however, that it is applicable to a "complaint" case rather than to a representation proceeding such as that with which we are here concerned. We therefore find this contention to be without merit.⁴

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the Independent represents a substantial number of employees in the unit hereinafter found to be appropriate.⁵

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.

² See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035; *Matter of Gulf Oil Corporation, Marine Department*, 36 N. L. R. B. 1003; *Matter of Seiss Manufacturing Company*, 7 N. L. R. B. 481.

³ National Labor Relations Board Appropriation Act, 1944, Title IV, Act of July 12, 1943, P. L. 135, 78th Congress, 1st Session. The provision in question is as follows:

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without a complaint being filed . . .

⁴ See *Matter of California Door Company*, 52 N. L. R. B. 68; *Matter of U. S. Bedding Company*, 52 N. L. R. B. 382; *Matter of Max Mordka and Flora Mordka, Co-partners d/b/a Memo Leather Goods Company*, 52 N. L. R. B. 625.

⁵ The Regional Director reported that the Independent submitted a petition in the form of application for membership and designation of bargaining representative, purporting to have been passed among the employees on September 29, 1943, containing 59 apparently genuine original signatures, of which 51 are the names of persons whose names appear on the Company's list of employees for the pay-roll period ending September 30, 1943, consisting of 62 names.

The ILWU relies upon the contract referred to above as establishing its interest.

IV. THE APPROPRIATE UNIT

Substantially in accordance with the stipulation of the parties, we find that all regular employees of the Company at New Orleans, Louisiana, excluding clerical employees, salesmen, solicitors, 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 hereih, 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Letellier-Phillips Paper Co., Inc., New Orleans, Louisiana, 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 Fifteenth 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 any 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 they desire to be represented by United Paper and Warehouse Workers Union, unaffiliated, or by International Longshoremen's and Warehousemen's Union, Local 207, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.