

In the Matter of HIRAM SWANK'S SONS *and* CONGRESS OF INDUSTRIAL
ORGANIZATIONS, LOCAL 1285

Case No. 6-R-871.—Decided February 16, 1944

Mr. E. M. Custer, of Johnstown, Pa., for the Company.
Mr. J. H. Radzyminski, of Pittsburgh, Pa., for the C. I. O.
Mr. Alfred G. Wagner, of Williamsport, Pa., for the A. F. L.
Mr. Charles W. Schneider, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Congress of Industrial Organizations, Local 1285, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Hiram Swank's Sons, Johnstown, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Clearfield, Pennsylvania, on January 11, 1944. The Company, the C. I. O., and United Brick and Clay Workers of America, Local No. 457, herein called the A. F. 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

Hiram Swank's Sons, a Pennsylvania corporation having its principal place of business in Johnstown, Pennsylvania, is engaged in the manufacture, sale, and distribution of refractory products at plants located in Johnstown, Large, Clymer, and Irvona, Pennsylvania. The

Company also owns and operates seven clay mines in the State of Pennsylvania. The present proceedings involve only the No. 16 mine, located in Lawrence Township, Clearfield County.

At the No. 16 mine the Company mines, per month, approximately 300 tons of clay, valued at \$900, which is processed at the Irvoña plant into refractory products. During the past year the Company has produced at the Irvoña plant finished products valued in excess of \$600,000, 50 percent of which was shipped to purchasers outside the State of Pennsylvania.

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

II. THE ORGANIZATIONS INVOLVED

Congress of Industrial Organizations, Local 1285, is a labor organization admitting to membership employees of the Company.

United Brick and Clay Workers of America, Local No. 457, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 23, 1943, the C. I. O. notified the Company that it represented a majority of the Company's employees at the No. 16 mine, and requested recognition as collective bargaining representative. The Company declined to accord such recognition.

On April 1, 1943, the Company and the A. F. L. executed a collective bargaining contract effective for 1 year, and providing for automatic renewal unless notice of a desire to change the contract was given by either party 30 days prior to the termination date. Although the agreement does not specifically describe the bargaining unit for which the A. F. L. was recognized, the A. F. L. contends that the contract covers the employees at the No. 16 mine, and is a bar to an election. Since the period for automatic renewal is imminent, and for other reasons apparent hereinafter, we find that the contract is not a bar to a present determination of representatives.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that both labor organizations represent substantial numbers of employees in the unit hereinafter found to be appropriate.¹

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.

¹ The Regional Director reported that the C. I. O. submitted evidence indicating that it represented four of the four employees in the appropriate unit as of October 31, 1943; and that the A. F. L. submitted evidence that it represented two of those employees.

IV. THE APPROPRIATE UNIT

The C. I. O. contends that all employees at the No. 16 mine, excluding supervisory employees, constitute an appropriate unit. The A. F. L. contends (1) that those employees are covered by the existing contract, and (2) that the employees at the No. 12 and No. 16 mines, excluding supervisors, constitute an appropriate unit. The Company takes no position.

As indicated heretofore, the contract does not describe the bargaining unit. However, the testimony indicates that it was intended by the parties at the time of execution to cover the employees at the Irvona and Clymer plants and at the Company's No. 3 and No. 12 mines. The latter two mines, along with No. 16, furnish clay for the Irvona plant. The No. 12 mine also furnishes clay for the Company's Johnstown plant whose employees are covered by a contract with the C. I. O.²

The Company purchased the No. 16 mine about August 1, 1943, 4 months after the contract with the A. F. L. was executed. At the time of execution of the contract, the acquisition of No. 16 was not within the contemplation of the parties. No. 16 is located 30 miles from the Irvona plant, and about 15 miles from No. 12. There are no other Company mines in the vicinity.

There is no interchange of miners between No. 16 and other Company operations. Two of the four employees at No. 16 were employed there by the Company's predecessor in title. The other two were hired by the Company when it took over No. 16.

If the clay is satisfactory, employment at No. 16 will be increased to 12 men, at a hiring rate of 1 new employee each 4 months. However, No. 16 is substantially an experimental project, involving the use of a new type of clay, and its future development is dependent upon the results achieved.

Since the acquisition of No. 16 was not within the contemplation of the parties at the time of the execution of the contract, and in view of the nature of operations at No. 16, as well as its separation from the Company's other operations, we are of the opinion that the employees at No. 16 constitute an appropriate bargaining unit.³

We therefore find that all employees at the No. 16 mine of the Company, excluding 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.

² At mine No. 15, in Somerset County, which also provides clay for the Johnstown plant, the Company is under contract with the United Mine Workers of America.

³ *Matter of Pacific Box Co.*, 50 N. L. R. B. 720.

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 union who were employed during the pay-roll 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 the 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 Hiram Swank's Sons, Clearfield, Pennsylvania, 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 Sixth 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 they desire to be represented by Congress of Industrial Organizations, Local 1285, or by United Brick and Clay Workers of America, Local No. 457, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.