

IN THE MATTER OF LANDIS MACHINE COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, EUREKA LODGE #513 and INDEPENDENT EMPLOYEES' ASSOCIATION OF LANDIS MACHINE COMPANY, WAYNESBORO, PENNSYLVANIA

*Case No. 6-RE-17.—Decided February 17, 1944*

*Messrs. John C. Gall and Moultrie Hitt, of Washington, D. C., for the Company.*

*Mr. Victor S. Gauthier, of Waynesboro, Pa., and Mr. H. I. Smith, of Pittsburgh, Pa., for the I. A. M.*

*Mr. E. L. Luttrell, of Martinsburg, W. Va., for the Independent.*

*Mr. Leon Novak, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Landis Machine Company, Waynesboro, Pennsylvania, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of employees of the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held on January 6, 1944, at Waynesboro, Pennsylvania. The Company, the International Association of Machinists, Eureka Lodge #513, affiliated with the American Federation of Labor, herein called the I. A. M., and the Independent Employees' Association of Landis Machine Company, 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 reserved ruling on the motions directed, in effect, to dismissal of the petition herein. For reasons appearing hereinafter said motions are hereby denied. 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. 225.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Landis Machine Company, having its principal place of business at Waynesboro, Pennsylvania, is a Pennsylvania corporation engaged in the business of manufacturing thread and cutting machines, die heads and collapsible taps. During the year 1943, the Company purchased raw materials, consisting chiefly of iron and steel products, having an approximate value of \$750,000, approximately 40 percent of which was shipped to it from points outside the State of Pennsylvania. During the same period the Company sold finished products, valued at approximately \$9,000,000, of which approximately 75 percent was sold and shipped by it to points outside the State of Pennsylvania.

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

## II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Eureka Lodge #513, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Independent Employees' Association of Landis Machine Company is an unaffiliated labor organization, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The I. A. M., by agreement dated September 17, 1942, had been representing the employees of the Company as their exclusive bargaining representative. The contract was for a term of 1 year and also provided that notice concerning proposed changes to the agreement requested by either party, was to be given in writing, 30 days prior to its expiration. On August 16, 1943, the Company served notice on the I. A. M. that, upon its expiration, it desired to terminate the current contract.

In a letter to the Company dated September 7, 1943, the Independent claimed to represent a majority of the production and maintenance employees and requested the Company to accord it recognition, and to refrain from bargaining with the I. A. M. The Company replied that it would refuse to deal with either organization unless certified by the Board as exclusive bargaining representative of its employees. On September 21, 1943, the Company filed its petition for investigation and certification of representatives.

It appears that, during the period when the I. A. M. contract was in force, the Company and the A. F. L. were unable to agree as to the proper interpretation of one of the clauses therein, covering wages. Thereupon, the dispute was certified to the National War Labor Board. At the same time, there was also submitted to the National War Labor Board, an issue concerning the Company's failure to pay a Christmas bonus to its employees for the year 1942, although no provision therefor appeared in the contract. Final decision was not made by the National War Labor Board as to either issue, until after the expiration of the contract, and the issue relating to the Christmas bonus still remains undecided.

The I. A. M. moves that the petition herein be dismissed, contending that an election, if now directed, would penalize it for unavoidable delays consequent upon its acceptance of orderly procedures established by governmental authority for the adjustment of differences with an employer. We find no merit in this contention. The mere pendency of a dispute before the National War Labor Board does not operate to divest this Board of jurisdiction in a representation proceeding. In those cases where the Board has declined to order an election in the presence of a dispute before the National War Labor Board, other facts were present which do not exist in the instant case.<sup>1</sup> Since, on August 16, 1943, the Company duly notified the I. A. M. that it desired to terminate its contract at the expiration thereof, and since the Independent, before its expiration, requested recognition of the Company as bargaining representative of its employees, we find that the pendency of the wage dispute before the National War Labor Board constitutes no bar to an election at this time.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the I. A. M. and the Independent each represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning

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<sup>1</sup> See *Matter of Allis Chalmers Mfg. Co.*, 50 N. L. R. B. 306, and *Matter of Kennecott Copper Corp., Nevada Mines Division*, 51 N. L. R. B. 1140. In these cases, the Board had before it situations in which a recognized or certified representative had had no real opportunity to function as the exclusive representative, inasmuch as the initial bargaining efforts, following recognition or certification, had resulted in resort to the processes of the National War Labor Board. See also *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268; *Matter of Ft. Dodge Creamery Company*, 53 N. L. R. B. 928; *Matter of Columbia Protokosite Co., Inc.*, 53 N. L. R. B. 560; *Matter of Americus J. Leonard, et al.*, 51 N. L. R. B. 1424.

<sup>2</sup> The Regional Director stated that the I. A. M. submitted its membership books, which, when checked against the Company's pay roll of October 16, 1943, which bore the names of 790 employees in the unit hereinafter found appropriate, disclosed that a total of 207 employees on the Company's pay roll of that date were paid up members of the I. A. M.

The Regional Director stated that the Independent submitted 28 undated petition forms, containing 371 unduplicated genuine original signatures, 368 of which were names appearing on the Company's pay roll of October 16, 1943.

of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

#### IV. THE APPROPRIATE UNIT

The parties are generally in agreement that the appropriate unit should consist of all of the production and maintenance employees of the Company at its Waynesboro plant, excluding foundry, pattern shop and clerical employees, janitors, draftsmen, watchmen, plant-protection employees, supervisors, and foremen.

There is controversy; however, over the inclusion or exclusion of yardmen. The I. A. M. would include these employees in the appropriate unit. The Company seeks to exclude them. The Independent takes no position with relation thereto. Yardmen are hourly paid employees who perform, chiefly, the duties, of common laborers. In addition to unloading the freight cars they also assist in the installation of machinery. They are also assigned to assist the plumbers and steamfitters employed by the Company. The yardmen enjoy the same privileges as other production and maintenance employees in the plant. Since there appears to be a close relationship between the work performed by the yardmen and that performed by the production and maintenance employees, we shall include yardmen in the appropriate unit.

We find that all production and maintenance employees of the Company at its Waynesboro plant, including yardmen, but excluding foundry, pattern shop, and clerical employees, janitors, draftsmen, watchmen, plant-protection employees, supervisors, 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 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 herein subject to the limitations and additions set forth in the Direction. The I. A. M. requests that it be designated on the ballot as International Association of Machinists, affiliated with the A. F. L. The Independent requests that it be designated on the ballot as Independent Employees' Association of the Landis Machine Company, Waynesboro, Pennsylvania. We hereby grant the request of those organizations.

## 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 Landis Machine Company, Waynesboro, 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 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 International Association of Machinists, affiliated with the A. F. L., or by Independent Employees' Association of Landis Machine Company, Waynesboro, Pennsylvania, for the purposes of collective bargaining, or by neither.

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