

In the Matter of CONTINENTAL CAN COMPANY (MEMPHIS PLANT) and
UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 15-R-1058.—Decided February 29, 1944

Mr. Jack E. Hodgson, of Memphis, Tenn., and *Mr. C. V. Trickey*, of Chicago, Ill., for the Company.

Mr. Earl A. Crowder, of Memphis, Tenn., for the C. I. O.

Mr. R. O. Ross, of Atlanta, Ga., and *Mr. Herman A. Gerig*, of Memphis, Tenn., for the A. F. L.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Continental Can Company (Memphis Plant), Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at Memphis, Tennessee, on January 27, 1944. The Company, the C. I. O., American Federation of Labor, Local #22455, 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 A. F. L. moved at the hearing that no election be held until a disposition has been made by the Board of a complaint proceeding instituted against the Company herein by the C. I. O.¹ The Trial Examiner reserved ruling on this motion for the Board. Inasmuch as the C. I. O. has filed a waiver with respect to said complaint, the motion is hereby 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.

¹ Case No. 15-C-936.

55 N. L. R. B., No. 29.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Continental Can Company, a New York corporation, is engaged in the manufacture of containers. For this purpose it operates approximately 50 plants in various sections of the United States. We are concerned herein with the Company's plant located in Memphis, Tennessee, hereinafter referred to as the Memphis Plant. Said plant is engaged in the manufacture of metal fibre containers. During the past 12 months, the Memphis Plant has purchased raw materials valued at approximately \$300,000, almost all of which was shipped to said plant from points outside the State of Tennessee. During the same period, the Memphis Plant manufactured finished products valued in excess of \$500,000, of which approximately 90 percent was shipped to points outside the State of Tennessee. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local #22455 of the American Federation of Labor is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about November 22, 1943, the C. I. O. requested recognition of the Company as the collective bargaining representative of certain of its employees. The Company replied by letter stating that it was currently dealing with another labor organization, and suggested that the matter be settled by the Board.

The Company is currently operating under a collective bargaining agreement with the "American Federation of Labor on behalf of the members of Local #22455." Although executed in 1942, said contract has subsequently been renewed by the parties thereto and the current term expires in March 1944. However, since this contract covers only employees of the Company who are members of the A. F. L., it does not constitute a bar to this proceeding.²

² *Matter of Pennsylvania Greyhound Lines*, 3 N. L. R. B. 622; *Matter of Pressed Steel Car Co., Inc.*, 7 N. L. R. B. 1099, 1101, 1102.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.³

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 C. I. O. seeks to represent a unit composed of all production and maintenance employees of the Company, including truck drivers, watchmen, and janitors, but excluding clerical workers, assistant foremen, and all other supervisory employees who have the power to hire and discharge. The Company contends that truck drivers and watchmen should be excluded from the unit; the A. F. L. agrees with the contentions of the Company.

The Company employs four watchmen who have been deputized by the city of Memphis. Although the record indicates that these employees will soon be deprived of their deputized status, they are at the present time deputized, and therefore do not properly constitute part of the industrial unit.⁴ Accordingly, we shall exclude them. However, they are to be excluded therefrom only so long as they retain their deputized status.

The Company employs one outside truck driver. This employee is paid on an hourly basis and spends the major portion of his working day away from the plant. He does, however, perform some production work at the plant. We are of the opinion that he may properly form part of the production and maintenance unit. Accordingly, we shall include him therein.

We find that all production and maintenance employees of the Company, including truck drivers and janitors, but excluding clerical employees, militarized or deputized watchmen, subforemen, 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.

³ The Regional Director reported that the C. I. O. submitted 87 designation cards of which 66 bore apparently genuine and original signatures, and contained the names of persons appearing upon the Company's pay roll for the period ending December 19, 1943; and that said pay roll contained the names of 118 persons within the unit hereinafter found appropriate.

The A. F. L. relies upon its contract dated March 20, 1942, as renewed, for the establishment of its contract.

⁴ *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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.⁵

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 Continental Can Company (Memphis Plant), Memphis, Tennessee, 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 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 United Steelworkers of America, C. I. O., or by American Federation of Labor, for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

⁵ The C. I. O. requested that it be designated on the ballot as "United Steelworkers of America, C. I. O.," and the A. F. L. designated thereon as "American Federation of Labor." Both requests are hereby granted.