In the Matter of THE PROSPERITY COMPANY, INC. *and* INTERNATIONAL ASSOCIATION OF MACHINISTS

Case No. 3–R–729.—Decided March 9, 1944

Fraser Brothers, of Syracuse, N. Y., for the Company.
Mr. D. J. Omer, of Buffalo, N. Y., for the I. A. M.
Mr. Donald P. Gorman, of Syracuse, N. Y., for the Independent.
Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, affiliated with the A. F. of L., herein called the I. A. M., alleging that a question affecting commerce had arisen concerning the representation of employees of The Prosperity Company Inc., Carthage, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Watertown, New York, on January 26, 1944. The Company, the I. A. M., and Prosperity Employees Association, herein called the Independent, 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 Company made a motion to dismiss the petition on the ground that the unit which the I. A. M. has requested is inappropriate. In the alternative, the Company moved to remand the case for further hearing at which the Company shall be permitted to examine the Field Examiner's Report on Investigation of Interest of Contending Labor Organizations. For reasons appearing hereinafter, the motions are hereby denied. The Company also objected to the I. A. M.'s representative participating at the hearing on the ground that such representative was not a member of the New York State Bar and, therefore, such participation was in violation of the Penal Code of that State. The Trial Examiner

overruled the objection. The ruling is hereby affirmed.[1] The other rulings, made by the Trial Examiner 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

The Prosperity Company, Inc., is a New York corporation engaged in the manufacture of various items for the Navy, Army, and Maritime Commission, at Syracuse and Carthage, New York; the plant at Carthage, New York, is involved in this proceeding. During the year 1943, the Company used raw materials valued in excess of $1,000,000, approximately 15 percent of which was shipped from points outside the State of New York. During the same period, the Company manufactured finished products valued in excess of $2,500,000, approximately 70 percent of which was shipped to points outside the State of New York. For the purpose of this proceeding, 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, affiliated with the American Federation of Labor, and Prosperity Employees Association, unaffiliated, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about December 15, 1943, the I. A. M. notified the Company that it represented a majority of the Company's employees at the Carthage plant and requested exclusive recognition for bargaining purposes. The Company refused to grant such request on the grounds that the unit requested by the I. A. M. is inappropriate, and it doubted the majority status of the I. A. M., and that the employees involved herein were presently covered by a collective bargaining contract between the Company and the Independent.

The contract which the Company, as well as the Independent, alleges as a bar to a present determination of representatives was ex-

[1] See Article II, Section 25, of National Labor Relations Board Rules and Regulations—Series 3.

ecuted on March 31, 1943,[2] and contains *inter alia* the following provisions:

> The Company continues to recognize the Union [Independent] as the exclusive bargaining agency for all of its employees except clerical and office workers, superintendents, foremen and supervisory officials, with regard to wages, hours, and other terms and conditions of employment.
>
> Every employee who is eligible to membership in the Union [Independent] under its classifications and qualifications shall and must be a member in good standing of the Union [Independent]. The Company shall give to each new employee upon hiring, a copy of this contract.
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> This agreement shall remain in full force and effect from the date hereof until the expiration of six months after the cessation of hostilities, except that either party hereto may at intervals of six months propose to the other any modifications it may deem advisable and if an agreement is reached in respect thereto, this contract shall thereby be modified and as so modified continue to be binding until its termination as first herein set forth.

The evidence shows that since October 1, 1943, when the Carthage plant commenced operations, no effort was made by either the Company or the Independent to advise the employes at the Carthage plant of the existence of the contract, nor was any effort made to enforce the closed-shop provisions with respect to them. We have often held that a contract between a Company and a labor organization, which is claimed to have been extended to cover employees who were hired to work in a plant which was non-existent at the time the contract was negotiated, cannot operate as a bar to an election among the employees at the new plant.[3] We have a similar situation here in that the contract, which is alleged to be a bar, was in existence 6 months before the Company acquired the Carthage plant and, therefore, before the present personnel of such plant was employed by the Company. Furthermore, since the terms of the contract provide that it shall remain in full force and effect for an indefinite period, we find that this contract is not a bar to an investigation of representatives at this time.

A statement prepared by a Field Examiner of the Board, introduced in evidence, indicates that the I. A. M. represents a substantial number of employees in the unit hereinafter found to be appropriate.[4]

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[2] The Company and the Independent have been in contractual relationship for several years with respect to the employees of the Company's Syracuse plant.

[3] *Matter of Chase Brass & Copper Co., Inc.*, 47 N. L R B 298.

[4] The Field Examiner's statement shows that the I. A. M submitted 17 authorization cards, signed in November and December 1943, all of which bear apparently genuine signa-

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 I. A. M. seeks a unit comprised of all employees of the Carthage plant, excluding office, clerical and supervisory employees. The Company and the Independent do not oppose the classification of employees sought by the I. A. M., their position being confined to the contention that the employees at the Syracuse plant should be included in the unit requested by the I. A. M.

The Carthage plant, which is approximately 80 miles from the Syracuse plant, began operations in October 1943. Both plants are under the same executive management, but each plant has its own superintendent and foreman. Raw materials and unfinished products used at the Carthage plant are purchased solely for such plant, and the finished products are shipped directly from said plant. While the type of product manufactured and the duties of employees in both plants are identical, the Carthage plant hires its own personnel, and there is normally no interchange of employees between the two plants. Moreover, the record shows that no attempt had been made to organize the employees of the Carthage plant prior to the organizational activities of the I. A. M.

We are of the opinion, therefore, that the employees in the Carthage plant are a homogeneous group and can function effectively as a separate unit for the purposes of collective bargaining.

We find that all employees of the Company's Carthage, New York plant, excluding office, clerical 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-

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tures and the names of persons whose names are listed on the Company's pay roll of recent date; there are approximately 22 employees in the appropriate unit.

The Independent relies upon its contract as establishing its interest.

As stated above, the Company moved to remand the case for further hearing so that the Company could examine the Field Examiner's Report as to the I A M's claim of representation. The motion was denied for the reason, as we have frequently stated, that the report of a Board agent with respect to a representation claim is taken, not as proof of the precise number of employees who desire to be represented by a labor organization, but rather to protect the Company and the Board from unfounded claims by such organizations and to give reasonable assurance that a number of employees desire to be so represented. See *Matter of Amos-Thompson Corporation*, 49 N. L. R B. 423, and cases cited therein.

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 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 The Prosperity Company, Inc., Carthage, New York, 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 Third 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. of L., or by Prosperity Employees Association, unaffiliated, 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.