

In the Matter of HARRY C. SMITH Co., INC., d/B/A SOUTHERN SHELLAC
Co. and UNITED GAS, COKE & CHEMICAL WORKERS, C. I. O.

Case No. 15-R-1092.—Decided March 30, 1944

Mr. Bertrand W. Cohn, of Memphis, Tenn., for the Company.
Messrs. Earl A. Crowder and W. A. Copeland, of Memphis, Tenn.,
for the Union.
Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Gas, Coke & Chemical Workers, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Harry C. Smith Co., Inc., d/b/a Southern Shellac Co., Memphis, Tennessee, herem called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at Memphis, Tennessee, on March 7, 1944. The Company and the Union appeared at and participated in the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ 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

Harry C. Smith Co., Inc., d/b/a Southern Shellac Co., is a Tennessee corporation operating a plant at Memphis, Tennessee, where it is en-

¹ Although Paint Makers Local Union No. 1281, herein called Local 1281, was served with notice of hearing, it did not appear.

gaged in importing, bleaching, and manufacturing or processing shellac. During 1943 the Company purchased raw materials valued at about \$400,000, substantially all of which was shipped to it from points outside the State of Tennessee. During the same period the Company sold products valued at about \$500,000, about 90 percent of which was shipped to points outside the State of Tennessee. The Company admits, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Gas, Coke & Chemical Workers is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 22, 1944, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

On March 25, 1941, the Company and Local 1281 entered into an exclusive collective bargaining contract. The contract is terminable upon 30 days' notice by either party thereto. Inasmuch as the contract has been in existence for over 3 years and is terminable upon 30 days' notice, we find that it does not constitute a bar to a determination of representatives at this time.

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

We find, in agreement with a stipulation of the parties, that all production and maintenance employees of the Company, including truck drivers, but excluding clerical employees 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 pur-

² The Field Examiner reported that the Union presented 22 application-membership cards bearing names of persons who appear on the February 4, 1944, pay roll of the Company. There are approximately 23 employees in the appropriate unit

poses 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 means of 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.

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 Harry C. Smith Co., Inc., d/b/a Southern Shellac Co., 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 any who have since quit or been discharged for cause and who have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Gas, Coke & Chemical Workers, C. I. O., for the purposes of collective bargaining.