

IN THE MATTER OF THE FERBERT-SCHORNDORFER COMPANY and DISTRICT
50, UNITED MINE WORKERS OF AMERICA

Case No. 8-R-1430.—Decided April 5, 1944

Messrs. G. E. Bartholomew, Jr., and C. R. Weaver, both of Cleveland, Ohio, for the Company.

Mr. Stanley Denlinger, of Akron, Ohio, and Mr. McElroy Trout, of Cleveland, Ohio, for District 50.

Mr. Wendell Ringholz, of Cleveland, Ohio, and Mr. Paul Zazrivy, of Lakewood, Ohio, for the C. I. O.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of The Ferbert-Schorndorfer Company, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Dominick L. Manoli, Trial Examiner. Said hearing was held at Cleveland, Ohio, on March 10, 1944. The Company, District 50, and Local Union 99, United Gas, Coke and Chemical Workers of America, C. I. O., herein called the C. I. O., 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 C. I. O. moved for a dismissal of the petition, and District 50 moved that the C. I. O. be denied a place upon the ballot. The Trial Examiner referred both motions to the Board. For reasons hereinafter stated, both motions are 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Ferbert-Schorndorfer Company, an Ohio corporation, with its principal place of business located in Cleveland, Ohio, is engaged in the manufacture of protective coatings. Ninety-five percent of the raw materials used by the Company is obtained from points outside the State of Ohio, and 60 percent of its annual sales, which amount to more than \$1,000,000, is shipped by the Company to points outside the State of Ohio.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

Local Union 99, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to District 50 as the exclusive bargaining representative of its production and maintenance employees until District 50 has been certified by the Board in an appropriate unit.

The Company has previously bargained with the C. I. O. as the representative of the employees concerned in this proceeding. Its most recent written contract with the C. I. O., dated January 2, 1943, expired by its terms on December 31, 1943. However, the parties agreed verbally to extend the terms of the contract until a new agreement could be reached, this understanding having been confirmed by a written communication dated February 4, 1944, sent by the Company to the C. I. O. We are of the opinion and find that the verbal extension agreement, though acknowledged in writing by the Company, does not constitute a bar to a present determination of representatives since, at best, it is an extension of the contract for an indefinite period.¹

¹ *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512. If the written confirmation had extended the 1943 contract for a definite term, it would nevertheless be insufficient to bar the present proceeding, since it was executed solely by the Company. Cf. *Matter of Union Switch & Signal Company*, 30 N. L. R. B. 922. It is well established, moreover, that a mere verbal agreement cannot serve to preclude a present determination of representatives. *Matter of Esacor, Inc.*, 46 N. L. R. B. 1035.

A statement of the Board's Field Examiner, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.²

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

In general agreement with a stipulation of the parties made at the hearing, we find that all production and maintenance employees of the Company, excluding laboratory employees, experimental department employees, militarized guards, clerical workers, 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 payroll 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 Ferbert-Schorndorfer Company, Cleveland, Ohio, 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 Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject

² The Field Examiner reported that District 50 submitted 42 authorization cards; that the names of 40 persons appearing on the cards were listed on the Company's pay roll of January 20, 1944, which contained the names of 40 employees in the appropriate unit, and that the cards were all dated February 1944.

The C I O relies upon its contract dated January 2, 1943, as thereafter extended, for the establishment of its interest. In view of this fact we shall accord it a place on the ballot.

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 District 50, United Mine Workers of America, or by Local Union 99, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.