In the Matter of CHAMPION AERO AND METAL PRODUCTS, INC. *and* LOCAL 1227, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO

Case No. 2–R–4435.—Decided April 8, 1944

Barshay, Frankel & Rothstein, by *Mr. Nathan Frankel*, of New York City, for Champion and Insuline.

Mr. Frank Scheiner, of New York City, for the CIO.

Ashe & Rifkin, by *Mr. David I. Ashe*, of New York City, for the A. F. of L.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 1227, United Electrical, Radio & Machine Workers of America, CIO, herein called the C. I. O.,[1] alleging that a question affecting commerce had arisen concerning the representation of employees of Champion Aero and Metal Products, Inc., Long Island City, New York, herein called Champion, the National Labor Relations Board provided for an appropriate hearing upon due notice before Martin I. Rose, Trial Examiner. Said hearing was held at New York City, on February 11, 17, 18, and 21, 1944. Champion, the C. I. O., Local B–1010, International Brotherhood of Electrical Workers, A. F. of L., herein called the A. F. of L., and Insuline Corporation of America, Inc., herein called Insuline, 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

The A. F. of L. moved at the hearing to dismiss the petition of the C. I. O. on the ground that an existing contract precluded a present in-

[1] The name of the C I O appears in the caption and in the body of this Decision as it was amended at the hearing by the addition of its Local designation.

vestigation and certification of representatives of employees of Champion. Ruling on this motion was reserved for the Board. For the reasons stated in Section III, *infra*, this motion is hereby denied. The A. F. of L. joined Champion and Insuline in a further motion to dismiss the petition of the C. I. O. on the ground that the unit proposed therein was inappropriate. Ruling on this motion was likewise reserved for the Board. For the reasons stated in Section IV, *infra*, this joint motion to dismiss is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Champion Aero and Metal Products, Inc., and Insuline Corporation of America, Inc., are affiliated New York corporations having their mutual place of business in Long Island City, New York. Champion is engaged in the manufacture of radio and electronic parts and accessories, and boxes for radio components and receiving sets. During its fiscal year ending October 31, 1943, Champion used materials valued at more than $50,000, all of which were supplied by Insuline. During the same period Champion manufactured products having a value of approximately $75,000, all of which were delivered to Insuline. The latter thereafter distributed approximately 80 percent of these products to points outside the State of New York.

Insuline is engaged in the manufacture, sale, and distribution of radio and electronic parts and accessories. During its fiscal year ending October 31, 1943, Insuline purchased raw materials having a value in excess of $500,000, of which approximately 50 percent originated at points outside the State of New York. During the same period Insuline sold products having a value in excess of $1,000,000, of which approximately 66 percent was shipped to points outside the State of New York.

Both Champion and Insuline admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local 1227, United Electrical, Radio & Machine Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of Champion.

Local B–1010, International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of Champion and Insuline.

III. THE QUESTION CONCERNING REPRESENTATION

On December 13, 1943, the C. I. O., by mail, advised Champion of its claim to represent the latter's employees and requested a meeting for the purpose of negotiating a collective bargaining agreement. Champion made no reply. At the hearing, Champion, Insuline, and the A. F. of L. contended that Champion's employees were presently covered by a contract between Insuline and the A. F. of L., and that this contract was a bar to a present determination of representatives of such employees.

The contract in question was entered into on June 10, 1943, for a term ending January 31, 1944, but subject to automatic renewal from year to year in the absence of written notice to the contrary by either party not later than 60 days prior to the termination date. No notice to terminate was given within the prescribed time. On January 17, 1944, Insuline and the A. F. of L. entered into a further agreement which merely continued the 1943 contract until a new agreement was "negotiated and signed."

We need not consider the effect of the January 17, 1944, agreement upon the June 1943 contract, since it is clear from the terms of the latter that only Insuline employees are covered therein.[2] While Champion, Insuline, and the A. F. of L. insist that it was their understanding that the former's employees were embraced by the June 1943 contract, we are of the opinion that a contract may not be successfully urged as a bar to an investigation and determination of representatives of employees who are not expressly covered by its written terms. We find, therefore, that the June 1943 contract, whether it be considered as having been automatically renewed, or as having been continued by the January 1944 agreement, does not preclude a present determination of representatives of Champion employees.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, as supplemented by a statement of the Trial Examiner made at the hearing, indicates that the C. I. O. represents

[2] Nowhere in the 1943 contract is there any reference to Champion employees The opening paragraph of the contract reads as follows:

> Agreement entered into this 10th day of June 1943, between Insuline Corporation of America, with its principal office at 36-02 35th Avenue, Long Island City, New York, hereinafter designated as the Employer, and Local B-1010 International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, with its principal office at 43 Lexington Avenue, New York, New York, hereinafter designated as the Union, for and in behalf of the Employees now employed and hereafter employed by the Employer and collectively designated herein as the Employees.

The above language is substantially the same as that contained in a contract entered into between Insuline and the A. F. of L on November 11, 1941, approximately a year before Champion was organized and incorporated.

a substantial number of employees in the unit hereinafter found to be appropriate.[3]

We find that a question affecting commerce has arisen concerning the representation of employees of Champion, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The C. I. O. seeks a unit of Champion employees. Champion, Insuline, and the A. F. of L. contend that the employees of the two companies together constitute an appropriate unit. The parties stipulated, however, that in the event the Board directs an election among Champion employees those eligible to vote should be all production employees, including degreasers, press operators, welders and machine bench employees, welders, shear operators, brake operators and brake die setters, sprayers and sprayer helpers, boxers, and screw machine and hand lathe operators, but excluding executives, clerical employees, 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.

Insuline was formed in 1927. On March 13, 1941, the A. F. of L. was certified by the Board as the collective bargaining representative of Insuline's production and maintenance employees.[4] Since that time, pursuant to collective bargaining agreements, Insuline employees have been represented by the A. F. of L.[5] Toward the end of 1941, the two principal stockholders and officers of Insuline created Champion, retaining all the stock and control therein, for the purpose of purchasing machinery which was burdened with mortgages and liens. Champion began operation in Brooklyn, New York, shortly after January 1, 1942, with 10 employees, most of whom were transferred from Insuline. In the latter part of 1942, Insuline acquired a 4-story building in Long Island City, New York, large enough for both Insuline's and Champion's operations. Shortly thereafter, the two companies moved into the building, Champion occupying the lower floor and Insuline the 3 upper floors.

As indicated in Section I, *supra*, the two companies are engaged in the same business. Their operations are, moreover, closely interrelated and interdependent. Thus, Insuline handles all the purchasing, makes all the sales, performs all office and clerical functions, and does all the hiring for the two companies. Champion's entire output

[3] According to these statements, the C I O. submitted 30 authorization cards, all bearing apparently genuine original signatures, 28 of which were the names of persons whose names appeared on Champion's pay roll of January 21, 1944, which listed 34 employees in the unit alleged to be appropriate.

[4] *Matter of Insuline Corp of America, Inc*, 30 N L R B. 299

[5] Insuline has had contracts with the A F. of L or a predecessor organization since October 1933.

is delivered to Insuline, and approximately one-half consists of parts used by Insuline in manufacturing its finished products. Insuline credits Champion with the market price for the latter's fabricated products, less the cost of the materials supplied by Insuline and Champion's share of the overhead expenses paid by Insuline. Tool makers employed by Insuline frequently perform work for Champion, and other Insuline employees almost daily assist and instruct Champion employees.

The above facts relating to the integrated character of the operation, management, and ownership of the two companies, and their joint location, clearly support the contention of the companies and the A. F. of L. that a single bargaining unit comprising Champion and Insuline employees is appropriate. However, these facts must be considered in the light of other facts which tend to indicate the appropriateness of a separate unit of Champion employees. In the first place, the companies have been in operation contemporaneously for more than 2 years, yet they have not established a history of collective bargaining on the basis of a single unit comprising both Insuline and Champion employees. On the contrary, as indicated in Section III, *supra*, Insuline employees have been expressly covered by written collective bargaining contracts during this period, whereas Champion employees have not. It is urged that Champion and the A. F. of L. have had an understanding that the Insuline contracts also covered Champion employees, and it is true that certain provisions of the Insuline contracts, such as the closed-shop and check-off appear to have been applied to Champion employees at least since the spring of 1943. Nevertheless, the fact that Champion employees were not expressly included in a written contract signed as late as June 5, 1943, militates against any conclusion from these circumstances that the employees of the two companies were treated as being in a single unit.[6]

We perceive in the record other factors which indicate that a separate unit of Champion employees might be appropriate. Thus, these employees are carried on a separate pay roll, so that for purposes of representation they are readily identifiable. Likewise, they have an entire floor to themselves, so that they are clearly segregated from Insuline employees. Moreover, while the two companies have several classifications of employees in common, a large part of the work at Champion consists of sheet metal operations which are not performed by Insuline employees.

[6] The list of wage scales and classifications found in the June 1943 contract fails to include certain classifications found at Champion No explanation was offered by Champion or the A. F. of L. for the omission of any express reference to Champion employees in the Insuline contract. Moreover, a petition by Insuline to the National War Labor Board for wage increases makes no mention of Champion employees.

Because of these factors, and in the absence of a history of collective bargaining on a single unit basis, we are of the opinion that the considerations in favor of a single unit of Champion and Insuline employees are balanced by those tending to favor a separate unit of Champion employees, so that Champion employees may either function as a separate unit for the purposes of collective bargaining or be included in a unit with Insuline employees.

Accordingly, before making a final determination with respect to the unit proposed by the C. I. O., we shall first ascertain the desires of the employees themselves. We shall direct an election by secret ballot [7] to be conducted among the employees of Champion in the following group who were employed during the pay-roll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein: all production employees, including degreasers, press operators, welders and machine bench employees, welders, shear operators, brake operators and brake die setters, sprayers and sprayer helpers, boxers, and screw machine and hand lathe operators, but excluding executives, clerical employees, 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, to determine whether they desire to be represented by the C. I. O. or by the A. F. of L. Upon the results of the election will depend, in part, our determination of the appropriate unit. If a majority of the employees in this voting group select the C. I. O. as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, a majority of these employees choose the A. F. of L., then they will have thereby indicated their desire to be included in the Insuline unit presently represented by the A. F. of L.

DIRECTION OF ELECTION

By virtues 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 Champion Aero and Metal Products, Inc., Long Island City, 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 Second Region, acting in this matter as agent for the National Labor Relations Board,

[7] The unions expressed preferences at the hearing that their respective names appear on the ballot as set forth in the direction of Election.

and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the voting group set forth 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 U. E.-C. I. O., Local 1227, United Electrical, Radio & Machine Workers of America, CIO, or by I. B. E. W., Local B–1010, A. F. of L., for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.