

In the Matter of THE VAN IDERSTINE COMPANY and LOCAL 12129,
UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, CIO

Case No. 2-R-4468.—Decided April 14, 1944

Mr. Thomas E. Kerwin, of New York City, for the Company.

Mr. Alexander E. Racolin, of New York City, for the C. I. O.

Buitenkant & Cohen, by *Mr. Jacques Buitenkant* and *Mr. Arnold Cohen*, of New York City, for the A. F. of L.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 12129, United Gas, Coke, & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of The Van Iderstine Company, Long Island City, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Davis, Trial Examiner. Said hearing was held at New York City on March 1 and 2, 1944. The Company, the C. I. O., and Butcher Workmen Union, Local 640, affiliated with the American Federation of Labor, herein called the A. F. of 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 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. The request of the A. F. of L. for oral argument is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Van Iderstine Company is engaged in the manufacture of tallow, greases, oils, glue, and cured hides and skins at Long Island
55 N. L. R. B., No 243

City, New York. The Company uses raw materials consisting principally of fats, bones, and packing house products. During the past year, the Company purchased for the plant raw materials valued in excess of \$100,000, approximately 25 percent of which was shipped to its plant from points outside the State of New York. During the same period, the sales of products finished at the Company's plant exceeded \$100,000, of which approximately 75 percent was shipped from the plant to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

Local 12129, United Gas, Coke & Chemical Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Butcher Workmen Union, Local 640, is a labor organization chartered by Amalgamated Meat Cutters and Butcher Workmen of North America and affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 17, 1943, the A. F. of L. and the Company entered into an exclusive bargaining contract covering factory employees at the Company's plant. The contract provided that it continue in effect for 1 year, and from year to year thereafter, subject to cancellation by written notice 60 days prior to the expiration of any contract year.

On November 23, 1943, the A. F. of L. sent a communication to the Company expressing its desire to renew the contract of February 17, 1943, for an additional year and requesting increases in the wage scale provided therein and negotiations with the Company with respect to the amount of such wage increase. Subsequently, the Company and the A. F. of L. conferred with respect to a new wage scale and their negotiations extended into January 1944.¹

¹ On January 19, 1944, a representative of the A. F. of L. wrote a letter to the Regional Director, relating the history of collective bargaining relations between the Company and the A. F. of L. The letter in course recites:

"On November 23, 1943, we sent a communication to The Van Iderstine Company, to the attention of Mr Hayes, in which we advised that we elected to renew the contract for an additional year but that we desired to negotiate increases in wages."

At the hearing the Company's attorney stated that the Company had in its files no "letter" from the A. F. of L. answering to the above description, and the A. F. of L.'s attorney stated that the A. F. of L. files contained no copy of any such "letter." The Company and the A. F. of L. do not deny, however, that such a communication was sent and received

On December 7, 1943, employees working in the Company's factory² circulated among themselves a round robin petition, containing no date and no text, soliciting the signatures of those who wished to "get rid of 640," as the A. F. of L. is sometimes called by the Company's employees. On the same day, the superintendent of the plant, hearing something of the matter, sent word through the plant foremen that he desired to meet with employee representatives of the several factory departments. In response to his request, employees in each department of the factory designated an employee representative. At a meeting held in the plant on the following day, the superintendent questioned the employee representatives concerning the disturbance and unrest in the plant. The employee representatives informed the superintendent that employees in their departments no longer desired to be represented by the A. F. of L. Although one of the representatives at this interview had in his possession at the time the robin petition which had been circulated the day before, and which then bore the signatures of approximately 94 employees, the petition was not shown to the plant superintendent, nor was he advised by any of the employees present of its existence. The employee representatives questioned the superintendent with respect to ousting the A. F. of L. as their bargaining representative. The superintendent told them that he would communicate with the business agent of the A. F. of L. and would report back to them in 5 days the result of his communication. The employee representatives thereafter received no report from the superintendent regarding the matter.

On December 12, 1943, the factory employees held a meeting outside the plant. At this meeting, attended by more than 75 employees, they voted to discharge the A. F. of L. as their bargaining representative, and they appointed a committee to arrange for their affiliation with another labor organization. The committee selected the C. I. O. and visited the business office of the C. I. O. to make inquiries about their affiliation. Thereafter, a letter addressed to the president of the Company and signed by the employee representatives was sent to the Company, calling to its attention the conference of December 8 and affirming the desire of the employees to sever relations with the A. F. of L. This letter, dated December 18, was not received by the Company until December 24, 1943. The departmental representatives of the Company's employees secured authorization cards from the C. I. O. and began to circulate them among employees in the factory. A petition dated December 18, 1943, reciting that the employees whose

² Employees working in the factory are commonly called the "inside" employees to distinguish them from employees of the collection department who work outside the plant and who, for this reason, are called the "outside" employees

signatures appeared thereon requested that their dues be no longer checked off to the A. F. of L., was also prepared and circulated for signatures about the factory. This petition, signed by 133 factory employees, was mailed to the Company and received by it on December 27, 1943. On December 22, 1943, the C. I. O. by letter formally advised the Company that it represented a majority of the Company's employees and requested a bargaining conference. The Company did not reply to this letter.

The A. F. of L. contends that, since neither the Company nor the A. F. of L. gave formal written notice to the other to terminate their contract before December 19, 1943, the day when the contract in the absence of notice was subject to renewal for a second term, the contract is existing and operative until February 17, 1945, and constitutes a bar to a determination of representatives at this time, in accordance with our ruling in the *Mill B* case.³ We can attach no importance to this contention. On November 23, 1943, the A. F. of L. elected not to rely upon the automatic renewal clause of the contract. It made a demand upon the Company for increase in the wage scale specified in the contract and requested negotiations for effecting such changes. Although at the same time it expressed a desire to continue the contract of February 17, 1943, for an additional year, its request for continuance was clearly not unconditional, and its simultaneous request for negotiation of a new wage scale nullified the operation of the automatic renewal clause.⁴ Moreover, prior to the automatic renewal date, both the Company and the A. F. of L. were fully informed that the Company's employees no longer desired to be represented by the A. F. of L., although a new bargaining representative had not then filed a formal claim to represent a majority of the Company's employees. In the *Mill B* case the Board said:

We do not go so far as to hold that only the union which is a party to the contract can give notice of an intent to terminate it prior to the operation of the renewal clause. *The employees can achieve the same result themselves by signifying an intent to designate new representatives, either by direct word to the employer or by filing a petition with the Board.* (Italics added.)

In the instant case, prior to the automatic renewal date, employees constituting, in fact, a majority of those in the appropriate unit, decided that they no longer desired the A. F. of L. to represent them, and themselves sufficiently brought these facts to the notice of the Company. Even if the automatic renewal clause had taken effect under these circumstances, the contract, so renewed, could not bar a

³ *Matter of Mill B, Inc.*, 40 N. L. R. B. 346

⁴ *Matter of The Western Foundry Company*, 41 N. L. R. B. 301.

determination of representatives pursuant to the petition of the C. I. O. filed herein.⁵

A statement prepared by a Field Examiner and introduced into evidence at the hearing indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁶

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

As noted above, the Company's employees are divided into two descriptive groups (1) the production and maintenance employees who work within the factory, and who are called the "inside" employees, and (2) the employees in the collection department, who are called the "outside" employees.

Up to the time of the hearing, the C. I. O. contended that the inside employees of the Company constituted an appropriate unit apart from the outside employees. The A. F. of L. in its motion to intervene set forth the appropriate unit as a unit including both the inside and the outside employees of the Company. At the hearing, the C. I. O. moved to amend its proposed unit to include inside and outside employees, and the A. F. of L. moved to amend its proposed unit to include inside employees and to exclude outside employees. The Trial Examiner granted both motions.

The inside employees include the skilled and unskilled production employees who handle and process the raw materials and products in the factory and employees in the maintenance departments who maintain and keep in repair and working condition the Company's equipment and properties. Employees in the collection department, who are termed the outside employees, are route men, route-men

⁵ See *Matter of Wilson Packing & Rubber*, 51 N. L. R. B. 910, where the Board expressed the opinion, *inter alia*, that a contract renewed pursuant to an automatic renewal clause at a time when the employer is on notice that the contracting union is no longer the functioning majority representative of his employees, is subject to the same infirmity as a contract initially negotiated and executed under such circumstances.

⁶ The C. I. O. submitted 133 cards, all of which bore the names of inside employees listed on the Company's pay roll of January 1944. There are approximately 158 employees in the appropriate unit. The cards were dated between December 18, 1943, and February 14, 1944.

The C. I. O. resubmitted to the Trial Examiner these and other cards already checked by the Field Examiner in order that the former might ascertain whether any such cards bore the names of outside employees of the Company. A written statement, prepared by the Trial Examiner and introduced into evidence at the hearing concerning his findings in this matter, discloses that none of the cards submitted by the C. I. O. bears the name of any outside employee listed on the Company's pay roll of February 19, 1944. There are approximately 100 outside employees employed by the Company.

The A. F. of L. submitted no cards in support of its claim to represent the Company's employees. The A. F. of L. has been their bargaining representative since 1940.

helpers, drivers, and drivers' helpers, who buy, collect, and bring to the plant bones, suet, skins, and household salvage grease for processing therein.

In February 1940, the A. F. of L. entered into a written bargaining contract with the Company concerning the inside employees and, since that time, has negotiated with the Company other written contracts covering the same employees. From February 1940 to February 1942, the Company's outside employees were represented by a local union chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, also affiliated with the American Federation of Labor. In February 1942, by agreement between the affiliated labor organizations, the A. F. of L. took over the representation of the outside employees, and since that time the A. F. of L. has negotiated for, and entered into written agreements covering, the outside employees, apart and distinct from its negotiation and agreements covering the inside factory workers. On May 18, 1943, the A. F. of L. entered into an exclusive bargaining contract covering the outside employees, retroactive to February 17, 1943, with an automatic renewal clause from year to year until and unless either party notify the other of a desire to terminate the contract by 30 days' written notice before the expiration of a contract year. No claim was made by the C. I. O. with respect to representing the outside employees until the day of the hearing. There is no evidence that the C. I. O. represents any outside employees. In fact, from the evidence introduced at the hearing, it clearly appears that the C. I. O. expressly rejected the requests of certain outside employees who sought to join with the inside employees for representation by the C. I. O. Under these circumstances we see no reason at this time to change the bargaining units historically established at the Company's plant, and we find that the inside employees constitute a separate unit for bargaining purposes apart from the outside employees at the plant.

The parties agree that office, technical, administrative, executive, and supervisory employees should be excluded from any bargaining unit found appropriate by the Board. We shall exclude employees in these categories from the bargaining unit for the Company's factory employees.

We find that all employees working at the Company's Long Island City plant, excluding outside employees in the collection department, office, technical, administrative, and executive 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 purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question which has arisen concerning the representation of the Company's employees may best be resolved by an election by secret ballot.

The C. I. O. contends that the Company has hired a number of new employees since February 17, 1944, when there was a labor disturbance at the plant, and desires that eligibility to vote in the election should be determined as of February 1, 1944. There is considerable turn-over among the Company's employees. We see no reason to depart from our usual practice in determining eligibility to vote in the election.

Those eligible to vote in the election shall be all employees in the unit found appropriate in Section IV, above, 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 The Van Iderstine Company, 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, 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 the 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 Butcher Workmen Union, Local 640, A. F. of L., or by Local 12129, United Gas, Coke & Chemical Workers of America, C. I. O., 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.