

In the Matter of GROSS GALESBURG COMPANY and AMALGAMATED
CLOTHING WORKERS OF AMERICA, C. I. O.

Case No. 13-R-2284.—Decided May 2, 1944

*Messrs. Richard G. Neagle and Joseph E. West, of Galesburg, Ill.,
for the Company.*

*Messrs. E. D. Schultheis and Vernon Dale, of Muscatine Iowa, for
the C. I. O.*

Mr. A. G. Goldberg, of Milwaukee, Wis., for the A. F. of L.

Mr. William Whitsett, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Clothing Workers of America, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Gross Galesburg Company, Galesburg, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon A. Rosell, Trial Examiner. Said hearing was held at Galesburg, Illinois, on March 15, 1944. At the commencement of the hearing, the Trial Examiner granted the motion of United Garment Workers of America, Local 243, A. F. of L., herein called the A. F. of L., to intervene. The Company, the C. I. O., and the A. F. of L. appeared and participated. All parties 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, an Illinois corporation, is engaged at its factory in Galesburg, Illinois, in the manufacture and distribution of work and

utility clothing. During 1943, substantially all raw materials, consisting of cloth, canvas, buttons, buckles, and trimmings, valued at more than \$75,000, were secured from sources outside the State. During the same period, the gross sales of the Company's manufactured products amounted to more than \$100,000, approximately 75 percent of which was sold and shipped to customers outside the State.

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

II. THE ORGANIZATIONS INVOLVED

Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

United Garment Workers of America, Local 243, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of its employees until the C. I. O. has been certified by the Board in an appropriate unit.

The A. F. of L. contends that its prior certification by the Board in October 1939¹ is a bar to a present determination of representatives by virtue of the fact that it had never enjoyed the rights accruing from such certification. There is no merit in this contention. The record shows that from November 1939 to January 1944 the A. F. of L. and the Company engaged, without success, in numerous conferences in an effort to arrive at mutually acceptable terms. The State and Federal Departments of Labor and the War Labor Board extended their services during this period without succeeding in arriving at an agreement. Counsel for the A. F. of L. admitted at the present hearing that in the foregoing 4 years there had never been a meeting of minds between the parties; and it is not contended that any unfair labor practice on the part of the Company prevented it. Inasmuch as more than 4 years have elapsed since the Board's certification of the A. F. of L., we hold that it does not constitute a bar to the present investigation.²

The A. F. of L. also contends that its contract, executed with the Company in May 1937 and extended orally in January, and by memorandum in October 1938, is a bar to a present determination of representatives. The same contention was made before us in the proceeding which led to the certification of the A. F. of L. in 1939. In that case³ we found that these contracts were not a bar. We again so find.

¹ See *Matter of Gross Galesburg*, 16 N. L. R. B. 566.

² See *Matter of Baltimore Insular Lines, Inc.*, 27 N. L. R. B. 426

³ See *Matter of Gross Galesburg Co.*, 15 N. L. R. B. 716.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁴ The A. F. of L. has an interest in the proceeding by virtue of its prior certification.

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

All parties agree that the appropriate unit is the same as that which has been found by the Board to be appropriate in the 1939 proceeding.⁵ The record shows that, except for the fact that fewer employees are now employed, all conditions have remained the same.

We, therefore, find, in accordance with our prior determination, that all production and maintenance employees, including the porter and the machinists, but excluding foreladies, superintendents, office employees, salesmen, watchmen, the head machinists, 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 representation can best be resolved by an election by secret ballot. A problem arises, however, as to the persons who shall be eligible to vote.

The A. F. of L. was certified by the Board in October 1939 and commenced negotiations with the Company for a contract. In an effort to secure acceptance of its proposed terms, the A. F. of L., on February 2, 1942, called a strike. Thereafter, active picketing was conducted in front of the Company's plant until April 1943. From that date to January 3, 1944, the A. F. of L. each day parked an automobile with a picketing sign on it in front of the plant from 7 a. m. to 5 p. m. In an effort to settle the dispute the Federal Conciliation Service was called in, but to no avail; the dispute was then referred to the War Labor Board. The War Labor Board agreed to take jurisdiction of the dispute on the condition that the strike be terminated. The A. F. of L. thereupon held a meeting on December 27, 1943, and

⁴The Field Examiner reported that the C I O submitted 103 cards bearing apparently genuine original signatures; that the names of 90 persons appearing on the cards were listed on the Company's pay roll of January 28, 1944, which contained the names of 111 employees in the appropriate unit; and that the cards were all dated in January 1944.

⁵*Matter of Gross Galesburg Co.*, 15 N. L. R. B. 716.

voted to terminate the strike. The automobile bearing the picketing sign was removed on January 3, 1944. The vote terminating the strike was, according to the A. F. of L. president, conditioned on a settlement of the differences between it and the Company. As of the date of the hearing, the War Labor Board had not effected a settlement. The A. F. of L. contends that the labor dispute is still current and that 79 employees have not returned to work and will not return until a settlement favorable to the A. F. of L. is effected; it also contends that these employees are entitled to vote in any election the Board may direct. It further contends that the employees hired by the Company to replace the strikers should not be allowed to vote.

The C. I. O. contends that on January 20, 1944, when it raised the question concerning representation, there was no current labor dispute because the strike had been terminated; that since the strike was not due to any unfair labor practice on the part of the Company, it was incumbent on the employees who had struck to request reinstatement; and that having failed to request reinstatement when the strike was terminated, they were no longer strikers or employees and hence not entitled to vote.

The Company contends that only those employees on its pay roll immediately prior to the Direction of Election should be allowed to vote, but indicates that in the event this procedure is not followed, only those strikers who have not obtained employment elsewhere and who are available to return to work should be allowed to vote.

It is clear, and we find, that the strikers ceased work as a result of a labor dispute which is still current. It follows, therefore, that, in accordance with our established practice,⁶ both the strikers who have not abandoned the strike and the replacement employees are entitled to vote. The record shows that some of the strikers have moved away from Galesburg or its vicinity, and that others have obtained employment elsewhere. While ordinarily such factors are not conclusive of an abandonment of the strike, we find that, in the circumstances of this case and particularly in view of the long history of fruitless negotiations between the A. F. of L. and the Company, such strikers have abandoned the strike, have no present interest in the selection of a bargaining agent, and hence are not entitled to vote.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot subject to the limitations and additions set forth in the Direction among the following employees in the appropriate unit:

1. Those who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein; and

⁶ *Matter of Rudolph Wurlitzer Company*, 32 N. L. R. B. 163; *Matter of Ideal Seating Company*, 36 N. L. R. B. 166.

2. Those employees who were employed during the pay-roll period immediately preceding the strike on February 2, 1942, and whose work ceased as a consequence of or in connection with said strike, but excluding those who have either moved away from Galesburg or its vicinity, or have obtained employment elsewhere, or have returned to work for the Company prior to December 27, 1943, and thereafter voluntarily quit their employment or were discharged for cause.

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 Gross Galesburg Company, Galesburg, Illinois, 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 Thirteenth 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 following employees in the unit found appropriate in Section IV, above, including employees in the armed forces of the United States who present themselves at the polls:

1. Those employees of the Company 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, 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; and

2. Those employees who were employed during the pay-roll period immediately preceding the strike on February 2, 1942, and whose work ceased as a consequence of or in connection with said strike, but excluding those who have moved away from Galesburg or its vicinity, or have obtained employment elsewhere, or have returned to work for the Company prior to December 27, 1943, and later voluntarily quit their employment or were discharged for cause, to determine whether they desire to be represented by Amalgamated Clothing Workers of America, C. I. O., or by United Garment Workers of America, Local 243, A. F. of L., for the purposes of collective bargaining, or by neither.