

In the Matter of CENTRAL FIBRE PRODUCTS COMPANY and CONGRESS OF
INDUSTRIAL ORGANIZATIONS

Case No. 17-R-840.—Decided May 16, 1944

Mr. Lee Hornbaker and Mr. Edwin B. Brabets, of Hutchinson, Kans.,
for the Company.

Mr. Michael Livoda and Mr. T. A. Long, of Denver, Colo., for the
CIO.

Mr. Archie Hook, of Albany, N. Y., for the International.

Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Central Fibre Products Company, Denver, Colorado, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Denver, Colorado, on April 14, 1944. The Company, the CIO, and International Brotherhood of Paper Makers, AFL (herein called the International), Denver Local #446, herein called Local #446, 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. The Company filed a motion for dismissal of this proceeding. The Trial Examiner referred the motion to the Board. The motion is denied. All parties were afforded an opportunity to file briefs with the Board.

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

56 N. L. R. B., No. 105.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a Delaware corporation, is engaged at Denver, Colorado, in the manufacture and sale of paper and paper products.¹ During 1943, approximately 15 to 20 percent of the raw materials used by the Company at Denver, totally valued in excess of \$250,000, came into Colorado from sources outside that State, while approximately 45 to 50 percent of the Company's finished products was sent to points outside the State of Colorado.

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

II. THE ORGANIZATIONS INVOLVED

Congress of Industrial Organizations and International Brotherhood of Paper Makers, affiliated with the American Federation of Labor, are labor organizations 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 certain of the Company's employees on the ground that there exists a collective agreement between the Company and Local #446 covering the employees involved. At the hearing the Company and the International asserted that this agreement constitutes a bar to this proceeding.

The Company and Local 350 of the International have been operating under a series of written collective agreements covering employees at the Company's Hutchinson, Kansas, plant, since 1935. The Denver plant, the sole plant involved in this proceeding, began its present operations in June 1941, with a personnel nucleus from the Hutchinson plant. In about November 1941, Local #446 was formed at the Denver plant and in April 1942 it requested from the Company a collective agreement and submitted a proposed written contract covering the Denver employees.² The contract was never executed. While the matter is not free from doubt, we shall assume for the purposes of this proceeding that the Company thereafter orally ex-

¹ The Company also operates several other plants in other States.

² Local #446 had been formed upon recommendation of the International in reply to an inquiry by Local #446 as to possible operation of Local #446 as a sub-local of Local #350 in order to preserve the Hutchinson seniority rights of these employees who had been transferred from Hutchinson to Denver.

According to Local #446, since the organizational advent of the C. I. O. at the Denver plant in June 1943, Local #446's membership has declined and it "started to deteriorate."

tended the benefits under the Hutchinson contract to the Denver employees, and that Local #446 accepted the extension. Since April 1942 Local #446 has not sought to negotiate with the Company for a separate agreement for the Denver plant. In October 1942 and in December 1943 the Company and Local #350 negotiated written contracts covering the Hutchinson plant. Neither of these agreements included by its terms the Denver plant, specifically providing that the agreements were with the Company "Hutchinson, Kansas, mill," and that recognition was extended by the "Hutchinson Mill" to Local #350, as sole representative of the employees at the Hutchinson plant. Other provisions of these agreements limit their operation to the Hutchinson mill. Local #446 is not a signatory to either agreement.

The Company and the International assert that the Hutchinson agreements were applied by oral arrangement to the Denver plant, and that the present Hutchinson contract is a bar to this proceeding involving the Denver plant employees. We disagree. The Hutchinson and Denver plants are about 450 miles apart. Except for the fact that top supervisory officials of the Company control certain general policies at both plants, there is no such interrelation between the plants as to make them in fact one operative unit, and the Company conceded at the hearing that the two plants were separate and distinct. In fact, the parties have agreed, as stated below, that the Denver plant can properly constitute a separate unit for purposes of collective bargaining. We have repeatedly held that an oral collective agreement does not constitute a bar to an investigation of representatives since it lacks the stabilizing features and effect of a written contract.³ We reiterate our position in that respect and find that the contract relied on by the Company and the International does not constitute a bar to this proceeding.

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

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 substantial agreement with a stipulation of the parties, that all production and maintenance employees of the Company at its

³ See e. g. *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

⁴ The Field Examiner reported that the C. I. O. submitted 68 authorization cards, 63 of which bore the names of persons listed on the Company's pay roll of February 13, 1944, which contained the names of 67 employees in the appropriate unit.

The International submitted its dues records and certain membership application cards, and points to those and its contracts as evidencing its interest in the employees involved.

Denver plant, excluding office clerks, watchmen, 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 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 Central Fibre Products Company, 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 Seventeenth 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 the Congress of Industrial Organizations, or by International Brotherhood of Paper Makers, A. F. of L.,⁵ for the purposes of collective bargaining, or by neither.

⁵ The unions here involved request that they be named on the ballot as shown in the text. The request is granted.