

IN the Matter of AMERICAN CONTAINER CORPORATION¹ and UNITED
AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, CIO

Case No. 3-R-760.—Decided May 16, 1944

*Penney & Penney, by Mr. Thomas Penney, Jr., of Buffalo, N. Y.,
for the Company.*

Mr. David Diamond, of Buffalo, N. Y., for the CIO.

Mr. Walter Kalinowski, of Depew, N. Y., for the Committee.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of American Container Corporation, Depew, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on April 24, 1944. The Company, the CIO, and American Container Committee, herein called the Committee, 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 moved to dismiss the petition. The Trial Examiner reserved ruling for the Board.¹ For reasons more fully set forth in Section III, below, the motion is denied. All parties were afforded an opportunity to file briefs with the Board.

¹ The Company's name is shown as corrected by stipulation at the hearing
56 N. L. R. B., No. 109.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a Delaware corporation, operates plants located at Rock Island, Illinois, and Depew, New York, at which it is engaged in the manufacture of rubber products. At the Depew plant, with which we are here solely concerned, the Company, during the year 1943, manufactured products valued in excess of \$10,000, about 95 percent of which was delivered in New York State to its parent corporation, the National Battery Corporation, for reshipment to points outside the State of New York. During the same period, the raw materials used at the Depew plant were valued in excess of \$5,000, over 20 percent of which was shipped from 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

United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, and the American Container Committee, unaffiliated, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of certain of the Company's employees on the ground that there is in existence a contract between the Company and the Committee. The contract was executed on July 24, 1943, and expires on July 30, 1944. In view of its imminent expiration, we find that the contract does not constitute a bar to a present determination of representatives for the period following July 30, 1944.²

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.³

² Both the CIO and the Committee desire an election.

³ The Field Examiner reported that the CIO submitted 43 authorization cards, 34 of which bore apparently genuine original signatures of persons appearing on the Company's pay roll of March 11, 1944, which contained the names of 60 employees in the appropriate unit.

The Committee relies on its contract with the Company as evidencing its interest in the employees here involved.

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 American Container Corporation at its Depew, New York, plant, exclusive of office and clerical employees and 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 American Container Corporation, Depew, 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 Third 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 United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, or by American Container Committee, for the purposes of collective bargaining, or by neither.