

In the Matter of NEW YORK CENTRAL IRON WORKS and CONGRESS OF
INDUSTRIAL ORGANIZATIONS

Case No. 5-R-1498.—Decided May 23, 1944

Lane, Bushong & Byron, by Messrs. David W. Byron and E. Stuart Bushong, of Hagerstown, Md., for the Company.

Messrs. Abe Klein and Robert J. Brylke, of Hagerstown, Md., for the C. I. O.

Mr. Leslie L. Myers, of Washington, D. C., Mr. Joseph S. Stamm, of Baltimore, Md., Mr. Carl Hubbell, of Hagerstown, Md., and Mr. William C. Waldecker, of Baltimore, Md., for the A. F. L.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon petition duly filed by Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of New York Central Iron Works, Hagerstown, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Hagerstown, Maryland, on March 31, 1944. The Company, the C. I. O., and International Association of Bridge, Structural & Ornamental Iron Workers, Shopmen's Local Union No. 603, A. F. L., herein called the A. F. L.,¹ 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 opportunity to file briefs with the Board.

¹ The appearance of the A. F. L. was both in the name of the Local, and in the name of the International.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

New York Central Iron Works is a partnership engaged in the operation of a single steel plate fabricating plant in Hagerstown, Maryland. The Company constructs tanks, towers, flumes and other similar structures. During the year 1943 the Company purchased materials consisting of steel plate and structural steel, having a value in excess of \$150,000, of which approximately 75 percent was shipped to the plant from points outside the State of Maryland. During the same period the Company's products were valued in excess of \$290,000, of which approximately 75 percent was shipped from the plant to points outside the State of Maryland.

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 is a labor organization admitting to membership employees of the Company.

International Association of Bridge, Structural & Ornamental Iron Workers, Shopmen's Local Union No. 603, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On February 6, 1942, the A. F. L. was certified by the Board as the collective bargaining representative of the Company's production and maintenance employees.² On April 1, 1942, the Company and the A. F. L. entered into a collective bargaining agreement for a fixed term of 1 year, which provided, *inter alia*, that in the event neither party gave notice to the other in writing of a desire to terminate or change the contract at least 4 months prior to its anniversary date, it would be automatically renewed from year to year. No notice to terminate was given prior to December 1, 1942, the automatic renewal date, and accordingly the contract was renewed for another year commencing on April 1, 1943. Nor was any notice to terminate given prior to December 1, 1943. It is the position of the A. F. L. and the Company that the contract was thereby automatically renewed for a

² *Matter of New York Central Iron Works, Hagerstown, Maryland*, 37 N. L. R. B. 894; 38 N. L. R. B. 978. The A. F. L. was the sole participant in a prior consent election conducted on April 4, 1941, among the Company's production and maintenance employees. In that election, a majority of the votes were cast against the A. F. L.

third 1-year term, and constitutes a bar to the present proceeding, since the evidence is undisputed that the C. I. O. did not inform the Company of its representation claim until January 21, 1944. The C. I. O. apparently contends that the A. F. L. ceased to function as a labor organization prior to December 1, 1943, the automatic renewal date of the contract, so that the contract was made ineffective and thus could not renew itself, or, in the alternative, that if the contract was legally renewed, it is no bar because the A. F. L. has since ceased to function as a labor organization, and, consequently, there is no party capable of administering the contract for the Company's employees. The A. F. L. denies that it has ceased to exist.

There is evidence in the record which tends to support the C. I. O.'s contention. Thus, since November 1943, the A. F. L. has not presented any grievances to the Company³ and has not sent any written communication to it. It has collected no dues in 1944, and has no members who are fully paid up; some of the original members are over a year behind in their payments. It has held no meeting of members since November 1943. In January 1944, upon the informal approval of the officers of the A. F. L., the bulk of the money remaining in the treasury was used for social purposes.

On the other hand, there is no evidence that the A. F. L. has been formally dissolved or that a change in affiliation was voted by the membership.⁴ The A. F. L. has not been suspended by the International⁵ and still retains its charter.⁶ There is no evidence to indicate a wholesale transfer of membership from the A. F. L. to the C. I. O.⁷ Furthermore, the A. F. L. has entered an appearance in the proceeding and denied that it has ceased to exist. A full slate of officers was elected in June 1943. A member of the grievance committee of the A. F. L. testified that the reason there had been no recent meetings of members was the fact that the employees had been working overtime on war production in the evenings. He further testified that relations with the Company had been good and hence there was no need to present grievances in recent months. Grievances have, however, been presented between June and December 1943. It appears, moreover, that no changes have been made in the A. F. L.'s contract, and, in general, its terms have been observed by the Company. We conclude that the evidence is not sufficient to support a

³ There is some vague testimony in the record that a grievance was presented 8 weeks prior to the hearing in the instant proceeding.

⁴ Cf. *Matter of The Connor Lumber and Land Co.*, 27 N. L. R. B. 306, 309; *Matter of United Stove Company*, 30 N. L. R. B. 305, 307-8; *Matter of Armstrong Rubber Company*, 35 N. L. R. B. 368, 370; *Matter of Godchau Sugars, Inc.*, 36 N. L. R. B. 926, 928; and *Matter of Sealed Power Corporation and The Accurate Co.*, 41 N. L. R. B. 1225, 1227.

⁵ Cf. *Matter of Dominion Electrical Manufacturing Company, Inc.*, 27 N. L. R. B. 722, 726.

⁶ Cf. *Matter of Armstrong Rubber Company*, 35 N. L. R. B. 368, 370; and *Matter of E. T. Fraim Lock Company, et al.*, 39 N. L. R. B. 202, 204.

⁷ Cf. *Matter of Sound Timber Company*, 8 N. L. R. B. 844, 846-7.

finding that the A. F. L. at any time ceased to function as a labor organization.

In accordance with the above findings, we find that the contract between the Company and the A. F. L. was renewed on December 1, 1943, and constitutes a bar to a present investigation and certification of representatives. Our finding in this respect does not necessarily indicate approval of all automatic renewal clauses regardless of their length. In cases where evidence is adduced to indicate that 4 months' notice clauses are not customarily included in contracts in the industry in question, we will hold that the absence of such custom limits the authority of the contracting union. Since there is no such evidence in the present proceeding, we are constrained to regard all the provisions of the A. F. L.'s contract as valid and therefore the claim of the C. I. O. was made 7 weeks after the legal deadline.

We find that no question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) of the National Labor Relations Act. We shall, therefore, dismiss the petition, but without prejudice to the C. I. O.'s right seasonably to file a new petition.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of New York Central Iron Works, Hagerstown, Maryland, filed by Congress of Industrial Organizations, be, and it hereby is, dismissed, without prejudice to the latter's right seasonably to file a new petition.

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