

In the Matter of THE TOLEDO DESK AND FIXTURE COMPANY and UNITED
WHOLESALE, WAREHOUSE AND DELIVERY EMPLOYEES, LOCAL 363
(CIO)

Case No. 8-R-1474.—Decided May 29, 1944

Messrs. Fred A. Smith and Lester Cope, of Toledo, Ohio, for the Company.

Messrs. Edward Lamb and Ivo Erwin, of Toledo, Ohio, for the CIO.

Messrs. Isadore Kohler and E. J. Rieger, of Toledo, Ohio, 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 United Wholesale, Warehouse and Delivery Employees, Local 363 (CIO), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of The Toledo Desk and Fixture Company, Toledo, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Arthur Stark, Trial Examiner. Said hearing was held at Toledo, Ohio, on April 25, 1944. At the commencement of the hearing the Trial Examiner granted the motion of the Maumee Valley District Council of Carpenters, Local 1359, 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. For the reasons set forth in paragraph III, below, the motion of the A. F. of L. to dismiss the petition on the ground that its contract with the Company is a bar to this proceeding, 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:

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FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, an Ohio corporation, is engaged at its plant at Toledo, Ohio, in the fabrication of steel and wood. It purchases annually raw materials, semi-finished material, and parts, valued in excess of \$100,000. Approximately 90 percent of said materials and parts is purchased outside the State of Ohio. Its finished products are valued in excess of \$400,000. Approximately 90 percent of such products is sold 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

United Wholesale, Warehouse and Delivery Employees, Local 363, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Maumee Valley District Council of Carpenters, Local 1359, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The record shows that the A. F. of L. has represented the Company's employees and has had a contract with the Company continuously since 1937. The A. F. of L. contract, executed on May 1, 1943, and due to expire April 30, 1944, contained a clause providing for a 1-year renewal unless 60 days prior to the expiration date the parties agree to negotiate a new agreement. On or about February 22, 1944, the A. F. of L. and the Company met and discussed the terms and conditions of a new contract. On March 6, 1944, the C. I. O. sent the Company notice, by registered mail, of its claim of representation. The record shows that this notice was received by the Company the following day. On or about March 15, 1944, the Company told the C. I. O. that it could not deal with it until it was properly certified. Sometime during the second or third week of March 1944, the A. F. of L. and the Company entered into a new agreement which was to run from May 1, 1944, to April 30, 1945. On March 20, 1944, the C. I. O. filed its petition with the Board.

The A. F. of L. contends that the 60-day renewal clause in its 1943 contract is a bar to the present proceeding, since the C. I. O.'s petition was not filed before this 60-day period. This contention is without merit because the automatic renewal clause became inoperative when the contract was opened for negotiation in February, prior to the 60-

day period. The A. F. of L. further contends that if the 1943 contract is not a bar, then the contract executed in March 1944 is a bar. This contention is likewise without merit since the C. I. O. notified the Company of its representation claim on March 6, 1944, and the contract was thereafter entered into with the full knowledge of the C. I. O.'s claim of interest.

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.¹

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

The Company, the C. I. O., and the A. F. of L. agree that the appropriate unit should consist of all employees of the Company with the exception of office workers, spot laborers, and supervisors. This proposed unit includes employees known as working foremen who check production, follow production through, are paid at a higher rate than ordinary employees, and have final authority to discharge employees. Although these working foremen have been covered by the A. F. of L. agreement since 1937, we shall, in accordance with our established practice, exclude them from the unit.

We find that all employees of the Company, but excluding office workers, spot laborers, supervisors, working foremen, and all other 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

In ascertaining the employees eligible to vote, the C. I. O. requests that the Board use the pay roll as of the time its petition for certification was filed, due to the fact that subsequent to that time several employees were temporarily laid off as a result of the Company's failure to secure certain contracts. Since our usual practice is to allow temporarily laid off employees to vote, its request is denied.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the em-

¹ The Field Examiner reported that the C. I. O. submitted 72 cards; that the names of 66 persons appearing on the cards were listed on the Company's pay roll of March 23, 1944, which contained the names of 136 employees in the appropriate unit; and that the cards were all dated during March 1944.

ployees 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 The Toledo Desk and Fixture Company, Toledo, Ohio, 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 Eighth 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 Wholesale, Warehouse and Delivery Employees, Local 363 (CIO), or by Maumee Valley District Council of Carpenters, Local 1359, A. F. of L., for the purposes of collective bargaining, or by neither.