

In the Matter of AMERICAN FURNITURE COMPANY and UNITED FURNITURE WORKERS OF AMERICA, C. I. O.

Case No. 9-R-1426.—Decided June 15, 1944

Mr. John A. Romweber, of Batesville, Ind., for the Company.

Mr. Frank Douthitt, of Bloomington, Ind., for the C. I. O.

Mr. Hubert E. Wickens, of Greenburg, Ind., for the United Employees.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Furniture Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of American Furniture Company, Batesville, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Batesville, Indiana, on June 1, 1944. The Company, the C. I. O., and United Employees of Romweber Industries, herein called the United Employees,¹ 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

American Furniture Company, an Indiana corporation with its principal office and place of business at Batesville, Indiana, is en-

¹ At the hearing the Trial Examiner granted United Employees' motion to intervene.
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gaged in the manufacture and distribution through retail and jobber channels, of bedroom and dining room furniture. Approximately 50 percent of the Company's raw materials, exceeding \$200,000 in value over a 12-month period, is obtained outside the State of Indiana. Approximately 85 percent of the Company's sales, exceeding \$500,000 in value over a 12-month period, is transported to points outside the State of Indiana.

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

II. THE ORGANIZATIONS INVOLVED

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

United Employees of Romweber Industries is an unaffiliated 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 because of an existing contract with the United Employees.

On July 28, 1939, following a consent election, the Company and the United Employees entered into a bargaining contract, effective until June 1, 1940, and automatically renewable in the absence of termination notice at least 30 days prior to that date. Thereafter various agreements supplementing the contract were executed, the latest being executed December 1, 1943. This supplement revised the wage clauses of the contract and further provided that the contract should remain in effect until December 1, 1944, unless terminated by appropriate notice prior to that time.²

The United Employees contends that the contract of July 28, 1939, as supplemented by the agreement of December 1, 1943, is now in existence and constitutes a bar to this proceeding. We are of the opinion, however, that under the terms of the December 1, 1943, supplement which provides, in effect, that the contract may be terminated at any time upon 3 weeks' notice, the contract has now become terminable at will. Accordingly, we find that it does not preclude a present determination of representatives.

² This provision reads as follows :

Unless three weeks written prior notice is given either by the Company or the Union, the contract between the Union and the Company will be in full effect until December 1, 1944

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.³

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 parties are generally agreed that the unit should cover all production and maintenance employees, including truck drivers and watchmen,⁴ but excluding clerical employees, foremen, and other supervisory employees.⁵ They are in disagreement, however, concerning the classifications discussed below.

Sample department head. The C. I. O. would exclude, and the Company and the United Employees would include, John Greishop. Under ordinary conditions, this employee spends the majority of his time in the sample department, of which he is the head. In that department, he directs the work of two or more men. At the present time, due to wartime curtailment of operations in the sample department, the larger portion of his time is devoted to production duties other than those normally performed by him in the sample department. It appears, however, that upon resumption of operations in the sample department, Greishop will again exercise more fully his supervisory duties as head of that department. We shall exclude the sample department head from the unit.

Draftsman-designer. The C. I. O. would also exclude, and the Company and the United Employees would include, Albert Moorman, an employee in the drafting department. His duties include drafting, arranging details for samples, inspecting samples of finished products and recommending changes in their details, and changes on drawings. We are of the opinion that Moorman's functions and interests differ sufficiently from those of the other production and maintenance employees to warrant his exclusion; accordingly, we shall exclude him from the unit.

We find that all production and maintenance employees, including truck drivers and watchmen, but excluding clerical employees, the draftman-designer, the sample department head, foremen, and all

³ The Field Examiner reported that there are 221 employees in the unit requested; that the C. I. O. submitted 131 authorization cards; that the names of 126 persons appearing on the cards were listed on the Company's pay roll of May 1, 1944; and that the cards were dated as follows: 119 in April 1944, 6 in May 1944, and 1 undated.

The United Employees relies upon its contract to establish its interest in the proceeding.

⁴ The watchmen are neither armed nor uniformed; their time is about equally divided between janitorial and plant-protection duties.

⁵ This unit is substantially the same as that covered by the contract between the Company and the United Employees.

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

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.⁶

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 Furniture Company, Batesville, Indiana, 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 Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 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 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 Furniture Workers of America, affiliated with the Congress of Industrial Organizations, or by United Employees of Romweber Industries, for the purposes of collective bargaining, or by neither.

⁶ The C. I. O. requests that eligibility be determined by the pay roll of May 1, 1944. No sufficient reason appears, however, for departing from our usual practice in this respect.