

In the Matter of COLONIAL HARDWOOD FLOORING CO., INC. and UNITED
FURNITURE WORKERS OF AMERICA, CIO, LOCAL 472.

Case No. 5-R-1309.—Decided June 30, 1944

Mr. Herman Goldberg, for the Board.

Mr. William A. Danzer, of Hagerstown, Md., for the Company.

Messrs. Abe Klein, Norman Reeder and Robert Brylke, of Hagerstown, Md., for the CIO.

Mr. Albert K. Plone, of Camden, N. J., and *Mr. E. W. Butler*, of Hagerstown, Md., for the Teamsters.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Furniture Workers of America, CIO, Local 472, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Colonial Hardwood Flooring Co., Inc., Hagerstown, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Hagerstown, Maryland, on May 2, 1944. The Company, the CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 992, AFL, herein called the Teamsters, 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. The Teamsters filed a brief, moving for a dismissal of the petition. For reasons stated in Section III, hereinafter, the motion is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Colonial Hardwood Flooring Co., Inc., a Maryland corporation, is engaged in the manufacture of wood products at a plant in Hagerstown, Maryland. The Company annually purchases raw materials valued at approximately \$75,000, of which in excess of 50 percent is shipped from points outside the State of Maryland. During the past year, the Company produced finished products valued at approximately \$390,000, of which in excess of 50 percent was shipped to points outside the State of Maryland. The Company concedes, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Furniture Workers of America, Local 472, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 992, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 9, 1944, the CIO advised the Company by letter that it represented a majority of the production and maintenance employees, and requested recognition as their exclusive bargaining representative and a conference for the purpose of negotiating a collective bargaining agreement. The Company failed to reply to the letter and thereafter refused to meet with representatives of the CIO, on the ground that its contract with the Teamsters constituted a bar to the recognition of any other labor organization. The contract asserted as a bar was executed on August 20, 1942, and provided for a term of 1 year. In August 1943, it was renewed for an additional 1-year term and will therefore remain in effect until August 20, 1944. The CIO contends that the Teamsters is dormant and that, for this reason, its contract constitutes no bar to a present determination of representatives.

The record suggests, but does not disclose with sufficient clarity, that the Teamsters has ceased to function effectively, as alleged. We note, however, that the contract will terminate on August 20, 1944.

Since an election conducted at this time in accordance with our customary procedure would result in a certification shortly before the expiration of the contract, we find that the contract is not a bar to a present determination of representatives for the purpose of negotiating a new contract to succeed the contract now in effect.¹

In its brief, the Teamsters moved for a dismissal of the petition, on the ground that there is pending before the National War Labor Board its petition for a wage increase for the employees involved herein. We have heretofore denied this motion for, as we have frequently declared, the mere pendency of a petition before the National War Labor Board does not operate to divest this Board of jurisdiction in a representation proceeding.²

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the CIO 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 CIO contends that the bargaining unit should consist of all production and maintenance employees of the Company, including truck drivers, automobile mechanic, shipping clerk, gang leaders and firemen-watchmen, but excluding salesmen, managers, and clerical and supervisory employees. The Teamsters urges the establishment of two separate bargaining units: (1) all truck drivers, the shipping clerk, and the automobile mechanic, and (2) all production and maintenance employees including inspectors, gang leaders, but excluding watchmen-firemen, salesmen, managers, clerical and supervisory employees, truck drivers, shipping clerk, and automobile mechanic. The Company is in agreement as to the units proposed by the Teamsters, except that it would exclude inspectors from the production and maintenance unit.

The Company is engaged in the manufacture of various wood products such as flooring, interior work for houses, benches, desks, and kitchen cabinets. Its operations consists of (1) a mill division where the lumber is rip sawed, planed, filed, joined, and finished; (2) a flooring department, where flooring molding, stair and treads, and risers

¹ See *Matter of Houde Engineering Corp.*, 38 N. L. R. B. 587; *Matter of Chrysler Motor Parts Corporation*, 38 N. L. R. B. 1379.

² See *Matter of American Finishing Company*, 52 N. L. R. B. 996, and cases cited therein.

³ The Field Examiner reported that the CIO submitted 30 authorization cards, all of which bore apparently genuine original signatures, that the names of 30 persons appearing on the cards were listed on the Company's pay roll of March 30, 1944, which contained the names of 40 employees in the appropriate unit; and that the cards were dated in February and March 1944. The Teamsters relies upon its contract with the Company to establish its interest in this proceeding

are manufactured; (3) a trimming department, where all types of molding and re-saw are manufactured; (4) a yard, where the lumber is stacked, tallied, loaded and unloaded, and dried. All of these operations are conducted in one enclosure covering about 3 acres and they constitute an integrated unit. The Company also maintains a fleet of trucks which are employed to haul lumber into the plant and to deliver the finished products.

The Company began operations in 1933, but there was no organization among its employees until 1941 when the Teamsters instituted its organizational activity. On August 20, 1941, the Teamsters and the Company entered into two separate collective bargaining agreements. One of these agreements covered the truck drivers and provided for a term of 1 year, with automatic renewal for an additional year in the absence of a notice of intention to terminate served by either party upon the other at least 30 days prior to August 20, 1942. The other contract covered the production and maintenance employees and provided for a term of 1 year. On August 20, 1942, the Teamsters and the Company entered into a new agreement, covering both the production and maintenance employees and the truck drivers, and providing for a term until August 20, 1943. In August 1943, this agreement was extended for an additional 1-year period. It is the contention of the CIO that, since August 20, 1942, collective bargaining among the Company's employees has been conducted upon the basis of a single plant-wide unit which included the truck drivers, and that the Board ought not to disturb this collective bargaining relationship by now establishing two separate units. The Teamsters contends, on the other hand, that, beginning in August 1941 and continuing down to the present, collective bargaining has been conducted upon the basis of the two separate units which it proposes to establish herein; that the agreement of 1942, although covering both production and maintenance employees and truck drivers, does not constitute bargaining on a basis of a single plant-wide unit because the circumstances surrounding the execution, the terms of the agreement itself and subsequent bargaining practice under the agreement indicate that these two groups of employees, although covered by a single contract, continued to be treated as separate units. We find it unnecessary to resolve this issue for even if it be assumed that the CIO is correct in its characterization of the past bargaining, we are of the opinion that this factor is not decisive of the unit issue in the instant case.

Historically, over-the-road or outside truck drivers belong to a clearly defined craft⁴ and their interests are identified with the business of transportation rather than with the particular industry which

⁴ See *Matter of Federal Telephone and Radio Corporation*, 49 N. L. R. B. 938.

they serve.⁵ Thus, in the instant case, the truck drivers are engaged solely in hauling raw materials to the plant and delivering the finished product to the Company's customers; most of their time is spent on the road where their interests and problems are clearly distinct from those of the production and maintenance employees. Their sole concern is with the operation and safety of the vehicles and of the goods entrusted to them for transit and delivery. In carrying out their peculiar duties, they are subject to Federal and State legislation and regulatory provisions which do not affect other employees. Thus, in the Teamsters' current agreement with the Company, there is the following provision:

It is further provided that should the I. C. C. (Interstate Commerce Commission) regulations revise downward the number of daily and weekly hours of truck drivers; then this paragraph is amended in accordance herewith.

While the services of the truck drivers are essential to the Company's operations, their functions are not integrated with those of the production and maintenance employees. Unlike the production and maintenance employees who are supervised by superintendents in the mill, the truck drivers receive their orders and instructions directly from their own supervisor in the Company's front office. The unique position of the drivers in the Company's operations has also been taken into account in the agreements of 1942 and 1943 which contain many special provisions relating solely to this employee group, while the remaining employees are covered by clauses of general application. These facts make it clear that the truck drivers constitute a separate and homogeneous group with distinct functions and interests. It is for these reasons that we have found it unnecessary to determine the character of the past bargaining, for, although we have often given weight to bargaining history in determining the scope of employee units, "this factor is not of itself conclusive when, as here, . . . there is a manifest overbalance of considerations which militate in favor of establishing a different unit."⁶ In view of these special circumstances, we are of the opinion and find that the truck drivers constitute a separate unit appropriate for the purposes of collective bargaining. We are also of the opinion and find that the production and maintenance employees constitute a separate unit appropriate for the purposes of collective bargaining.

All parties are agreed, and we find, that managers, salesmen, superintendents, assistant superintendents, and office employees should be excluded from the production and maintenance unit. The parties

⁵ Cf. *Matter of Jones and Laughlin Steel Corporation*, 54 N. L. R. B. 679.

⁶ See *Matter of Sutherland Paper Company*, 55 N. L. R. B. 38, and cases cited therein.

are also agreed, and we find, that gang leaders (or pushers) should be included in the production and maintenance unit. The record discloses that these employees possess no supervisory authority.

The parties are in disagreement with respect to the following groups of employees:

Watchmen-firemen: The CIO desires their inclusion in the production and maintenance unit while the Teamsters and the Company are opposed. The Company employs two or three watchmen-firemen and their general duties consist of patrolling the plant and maintaining fire in the boilers. They are hourly paid, do not engage in production work, are under the supervision of the office as distinguished from the mill, and have been excluded from the Teamsters' contracts. In view of these facts we shall exclude them from the unit.

Inspectors: The CIO and the Teamsters desire their inclusion in the production and maintenance unit, and the Company is opposed. The Company employs two persons classified as inspectors. Their duties consist of grading and tallying the lumber which is brought into the Company's plant. They are each assisted by two helpers who handle the lumber, but they have no authority to make recommendations regarding changes in the status of any employee. They are paid on an hourly basis, receive substantially the same wages as other production employees, are supervised by the mill superintendent, and have been included in the Teamsters' contracts. Upon the basis of these facts, we shall include inspectors in the production and maintenance unit.

Shipping Clerk: The Company has in its employ one person classified as shipping clerk. His duties consist of preparing orders for shipment and assisting in the loading and unloading of the trucks. He is under the same supervision as the drivers. The Teamsters and the Company seek his inclusion in the truck driver's unit, while the CIO would include him in the production and maintenance unit. We shall include him in the truck drivers' unit, for we are of the opinion that his duties and interests ally him more closely with the drivers than with the production and maintenance employees.

Automobile Mechanic: The Company employs one automobile mechanic whose sole duty consists in maintaining the Company's fleet of trucks. He is hourly paid and is under the same supervision as the drivers. Accordingly, we shall include him in the unit of truck drivers.

We find that all production and maintenance employees, including inspectors and gang leaders, but excluding managers, salesmen, truck drivers, the shipping clerk, the automobile mechanic, watchmen-firemen, office employees, superintendents, assistant superintendents, and all other supervisory employees with authority to hire, promote, dis-

charge, 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.

We further find that all truck drivers, the shipping clerk, and automobile mechanic, excluding 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 questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.⁷

DIRECTION OF ELECTIONS

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 purpose of collective bargaining with Colonial Hardwood Flooring Co., Inc., Hagerstown, Maryland, elections 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 Fifth 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 units found appropriate in Section IV, above, and set out below, 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 elections;

⁷ At the hearing, the Teamsters and the CIO requested that their names appear on the ballots as hereinafter set forth in the Direction of Elections.

(1) All production and maintenance employees, including inspectors and gang leaders, but excluding truck drivers, shipping clerk, automobile mechanic, watchmen-firemen, office employees, managers, salesmen, superintendents, assistant superintendents, 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, to determine whether they desire to be represented by the CIO, or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 992, AFL, for the purposes of collective bargaining, or by neither;

(2) All truck drivers, the shipping clerk, and automobile mechanic, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the CIO, or by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 992, AFL, for the purposes of collective bargaining or by neither.