

In the Matter of GREAT LAKES CARBON CORPORATION and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 3-R-798.—Decided July 7, 1944

Mr. F. B. Thatcher, of Niagara Falls, N. Y., for the Company.

Mr. Stanley Denlinger, of Akron, Ohio, and *Mr. Rinaldo Cappellini*, of Niagara Falls, N. Y., for District 50.

Mr. Charles A. Doyle, of Niagara Falls, N. Y., for the C. I. O.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Great Lakes Carbon Corporation, Niagara Falls, 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 Niagara Falls, New York, on May 22, 1944. At the hearing the Trial Examiner granted a motion to intervene made by United Gas, Coke and Chemical Workers, Local 12327, C. I. O., herein called the C. I. O. The Company, District 50, and the C. I. O., appeared and participated. The C. I. O. moved to dismiss the petition because of a contract between it and the Company. For reasons hereinafter stated, the motion is hereby denied. 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

Great Lakes Carbon Corporation, a Delaware corporation, is engaged in the manufacture of carbon and cathodes at Niagara Falls,
57 N. L. R. B., No. 23.

New York, the only operation involved in this proceeding. From January to May, 1944, the Company used at its Niagara Falls plant, raw materials amounting in value to \$50,000, of which 50 percent was shipped from points outside the State of New York. During the same period, the Company manufactured at its Niagara Falls plant, finished products amounting in value to \$50,000, of which 50 percent was shipped to 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

District 50, affiliated with the United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

United Gas, Coke and Chemical Workers, Local 12327, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize District 50 as the exclusive bargaining representative of its employees because of an existing contract with the C. I. O.

The contract between the Company and the C. I. O. was executed on May 5, 1943, following certification of the C. I. O. on February 24, 1943, as bargaining representative of the Company's production and maintenance employees.¹ The contract was to be effective until the 5th day of May following termination of the war, and thereafter on a year-to-year basis. It contained the substantive terms usually included in a collective bargaining contract, with the exception of provisions concerning wages and union security, which matters were submitted to the War Labor Board. On June 5, 1943, the War Labor Board issued its directive order denying the C. I. O.'s request for a general wage increase and directing the parties to establish an incentive wage system. On July 25, 1943, the Company and the C. I. O. executed a supplementary agreement embodying the directive of the War Labor Board. The supplemental agreement contained a maintenance of membership clause and a check-off arrangement; fixed hiring rates to be effective when approved by the War Labor Board; provided that female employees should receive rates of pay equal to those of male employees for equal work; and granted a 5-cent per hour premium to employees on certain shifts. Pursuant to the directive of the War Labor Board,

¹ The certification followed an election, directed by the Board in *Matter of Great Lakes Carbon Corporation*, 46 N. L. R. B. 1259.

the incentive wage system, finally agreed upon by the Company and the C. I. O., was submitted to that agency for approval about March 1944. At the time of the hearing the War Labor Board had not reached a determination on the wage issue.

The Company and the C. I. O. contend that the contract of May 5, 1943, and the proceedings before the War Labor Board bar a present determination of representatives. The contract of May 5, 1943, however, is a contract of indefinite duration, which has been in effect for a reasonable period, and consequently cannot operate to bar this case.² We are also of the opinion, that the application for wage changes before the War Labor Board does not preclude an investigation concerning representation at this time. The Board has held that a newly recognized or certified representative is entitled to a reasonable opportunity to obtain for the employees the benefits of exclusive representation, and that where delay in obtaining such benefits is caused by resort to the orderly processes of governmental agencies, the Board will not proceed with a new determination of representatives.³ Mere pendency of proceedings before a governmental agency, however, does not bar an election where the exclusive bargaining representative has had opportunity to obtain substantial benefits for the employees.⁴ The facts of the instant case convince us that the C. I. O. has had opportunity to, and has obtained, such benefits. Accordingly, we find that neither the contract of May 5, 1943, nor the pendency of the proceeding before the War Labor Board bars a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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, excluding construction bricklayers, deputized watchmen, office employees, laboratory employees executives, and foremen.⁶ They are in disagreement, however, con-

² See *Matter of The Trailer Company of America*, 51 N. L. R. B. 1106

³ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Matter of Kennecott Copper Corporation*, 51 N. L. R. B. 1140

⁴ See *Matter of Landis Machine Company*, 54 N. L. R. B. 1440, *Matter of International Harvester Company*, 55 N. L. R. B. 497.

⁵ The Field Examiner reported that District 50 submitted 103 authorization cards; that the names of 80 persons appearing on the cards were listed on the Company's pay roll of April 30, 1944; that there are 196 employees in the unit requested; and that the cards were dated between August 1943 and April 1944, with the exception of 4 which were undated.

The C. I. O. relies upon its contract to establish its interest in the proceeding.

⁶ This unit is substantially the same as that covered by the contract between the Company and the C. I. O.

cerning inspectors, whom the Company would exclude, and District 50 and the C. I. O. would include.

The Company employs six inspectors, who check the quality of the products produced in the various departments. They are responsible to the chief inspector, who has his office in the laboratory, but work throughout the plant among the production employees. The inspectors have authority to reject work when it is not up to a specified standard, but there is no indication that such rejection affects the status of the production employees, or that, in the course of their duties, the inspectors acquire confidential information concerning the Company's labor relations. Thus, it appears that the inspectors are hired in neither a supervisory nor a confidential capacity. Accordingly, we shall include inspectors in the unit.

We find that all production and maintenance employees of the Company's plant at Niagara Falls, New York, including inspectors, but excluding construction bricklayers, deputized watchmen, office employees, laboratory employees, executives, 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

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 payroll 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 Great Lakes Carbon Corporation, Niagara Falls, 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 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 District 50, affiliated with the United Mine Workers of America, or by United Gas, Coke and Chemical Workers, Local 12327, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.