

In the Matter of SHELBY PAPER BOX COMPANY and MEMPHIS INDUSTRIAL UNION COUNCIL, C. I. O.

Case No. 15-R-1130.—Decided July 7, 1944

Messrs. J. A. Cottam and Foster A. Jones, of Memphis, Tenn., for the Company.

Messrs. W. A. Copeland and Earl A. Crowder, of Memphis, Tenn., for the C. I. O.

Mr. R. F. Brown, of Memphis, Tenn., for the A. F. L.

Mr. Max M. Goldman, of Counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Memphis Industrial Union council, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Shelby Paper Box Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at Memphis, Tennessee, on May 23, 1944. At the hearing the Trial Examiner granted a motion to intervene made by Memphis Corrugated and Folding Box Workers Union No. 384 (Subordinate to the International Printing Pressmen and Assistants' Union of North America), A. F. L., herein called the A. F. L. The Company, the C. I. O., and the A. F. 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. 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

Shelby Paper Box Company, a Tennessee corporation, is engaged at its Shelby Paper Box plant at Memphis, Tennessee, in the manu-
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facture of corrugated shipping cases and folding paper boxes. The annual value of the Company's business amounts to \$750,000. Approximately 75 percent of the raw materials purchased by the Company is transported to it from points outside the State of Tennessee. Approximately 25 percent of the Company's finished products is shipped to points outside the State of Tennessee.

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

II. THE ORGANIZATIONS INVOLVED

Memphis Industrial Union Council, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Memphis Corrugated and Folding Box Workers Union No. 384 (Subordinate to the International Printing Pressmen and Assistants' Union of North America), affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In 1941, the Company and the A. F. L. executed a collective bargaining contract, effective for a term of 1 year and from year to year thereafter in the absence of written notice to terminate given 60 days prior to any anniversary date. Although June 30 was the anniversary date of the contract for the current year, the Company and the A. F. L., prior to the operative date of the automatic renewal clause, entered into a new contract on March 27, 1944, effective until May 1, 1945.

On April 13, 1944, the C. I. O. notified the Company that it represented a majority of the Company's employees and requested recognition for the purposes of collective bargaining. The Company informed the C. I. O. that it had a collective bargaining contract with the A. F. L., and, for that reason, such request would not be granted.

The Company and the A. F. L. contend that the contract of March 27, 1944, which superseded the contract which was to expire on June 30, 1944, constitutes a bar to a present determination of representatives. However, we repeat our previously expressed opinion that the premature extension of a contract of reasonable duration does not operate as a bar to a claim of representation made prior to the expiration date of the extended contract.¹ Since the C. I. O. apprised the Company

¹ See *Matter of Memphis Furniture Mfg. Co.*, 51 N. L. R. B. 1447; and *Matter of Wichita Union Stockyards Company*, 40 N. L. R. B. 369, 372, where we stated:

Were we to hold that the parties to a collective bargaining agreement * * * could forestall a petition for investigation and certification of representatives by entering into a supplemental agreement modifying the contract in advance of the date

of its claim to representation among the latter's employees long before the date when the automatic renewal clause of the extended contract was to take effect, we find that the agreement of March 27, 1944, does not preclude a present determination of representatives.²

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

Substantially in accordance with an agreement of the parties, we find that all the Company's production and maintenance employees at its Shelby Paper Box plant,⁴ excluding the engineer, office and clerical employees, foremen, supervisors, 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.

The C. I. O.'s request that it appear on the ballot as the "C. I. O.," and the A. F. L.'s request that it appear on the ballot as "Memphis Corrugated and Folding Box Workers Union No. 384, A. F. L." are

fixed therein for reopening negotiations, the right of the employees to seek a change of representatives after the lapse of a reasonable time might be defeated. So to hold would require of employees, desiring to change representatives, acceleration of organizational activities so that they would be ready to assert a claim of majority representation at any time the contracting parties might elect to discuss modification of the existing agreement, thus leading to disaffection and unrest under the existing agreement instead of stabilized labor relations.

² For the same reason the superseded contract does not serve to bar the instant proceeding. See *Matter of General Motors Corporation*, 40 N. L. R. B. 1387.

³ The Field Examiner reported that the C. I. O. submitted 39 membership cards; that the names of 28 persons appearing on the cards were listed on the Company's pay roll of May 3, 1944, which contained the names of 54 employees in the appropriate unit; and that 12 cards were dated in March 1944, and 27 in April 1944. The A. F. L. relies on its contract as evidence of its interest in the proceeding.

⁴ In its petition filed with the Board, the C. I. O. sought to represent the employees of two plants, the Shelby Paper Box plant and the Valley Fiber Box plant. At the hearing the Trial Examiner permitted the C. I. O. to amend its petition by limiting the proceeding to the employees of the Shelby Paper Box plant.

hereby granted. In the event that either the C. I. O. or the A. F. L. is certified, however, it shall be designated as its name appears in Section II, *supra*.

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 Shelby Paper Box Company, Memphis, Tennessee, 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 Fifteenth 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 any 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 the C. I. O., or by Memphis Corrugated and Folding Box Workers Union No. 384, A. F. L., for the purposes of collective bargaining, or by neither.