

In the Matter of E. B. & A. C. WHITING COMPANY *and* AMALGAMATED  
CLOTHING WORKERS OF AMERICA, C. I. O.

*Case No. 1-R-1881.—Decided July 14, 1944*

*Mr. Edmund T. Blake*, of Boston, Mass., for the Company.

*Mr. Anthony Jenkins*, of Burlington, Vt., for the Union.

*Mr. Louis Cokin*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Amalgamated Clothing Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of E. B. & A. C. Whiting Company, Burlington, Vermont, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel G. Zack, Trial Examiner. Said hearing was held at Burlington, Vermont, on June 6, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Company moved to dismiss the petition. The Trial Examiner reserved ruling thereon. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

E. B. & A. C. Whiting Company operates a plant at Burlington, Vermont, where it is engaged in the manufacture of fibres for brushes. The Company purchases raw materials valued in excess of \$100,000

annually, 50 percent of which is shipped to it from points outside the State of Vermont. The Company manufactures products valued in excess of \$100,000 annually, about 90 percent of which is shipped to points outside the State of Vermont.

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

## II. THE ORGANIZATION INVOLVED

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

## III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of its employees until such time as the Union is certified by the Board.

The Company contends that the petition should be dismissed because an election was held on January 27, 1944, at which time the employees voted against union representation, and further that the Union has no jurisdiction over the Company's employees. With respect to the latter contention, we have consistently held that the trade jurisdiction of a labor organization does not preclude it from seeking to act on behalf of employees in another industry or trade, if so selected by the employees.<sup>1</sup>

The election of January 27, 1944, was held pursuant to a petition filed by Textile Workers Union of America, C. I. O. Although a representative of the Union was present at the hearing preceding the January 27, 1944, election, the Union failed to intervene. The Company argues that the Union is now estopped to proceed at this time. We find the position of the Company to be untenable. We have often held that even the same labor organization may file a new petition within less than a year after an election where it is able to show that it has been designated by a substantial number of employees in the unit involved after the prior election. In the instant proceeding, a statement of the Field Examiner of the Board, introduced into evidence at the hearing, shows that the Union has been authorized by 166 employees to represent them. There are approximately 295 employees in the unit hereinafter found to be appropriate. One hundred sixty-three of the Union's cards are dated in March or April 1944.

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.

<sup>1</sup> See *Matter of McLouth Steel Corporation*, 30 N. L. R. B. 1000, and cases cited therein.

## IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all production and maintenance employees of the Company who are paid on a piece-rate or hourly basis, including watchmen,<sup>2</sup> but excluding office and clerical employees, executives, and 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 question concerning representation which has arisen be resolved by means of 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.

## 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 E. B. & A. C. Whiting Company, Burlington, Vermont, 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 First 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 or not they desire to be represented by Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

<sup>2</sup> The watchmen are not militarized.