

In the Matter of MACKENZIE AWNING COMPANY and UPHOLSTERERS INTERNATIONAL UNION AND ITS AGENT, TENT, CANVAS & DISPLAY DECORATORS' UNION, LOCAL #34, A. F. L. and UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, C. I. O. and LOCAL INDUSTRIAL UNION 98, UNITED CONSTRUCTION WORKERS, C. I. O.

Case No. 7-RE-13.—Decided July 20, 1944

Messrs. Emmett E. Eagan, and Duncan T. Mackenzie, both of Detroit, Mich., for the Company.

Messrs. L. K. Hougham, and George Horn, both of Detroit, Mich., for the A. F. L.

Mr. Franklin H. Achterkirch, of Detroit, Mich., for the United.

Mr. E. J. Shay, of Detroit, Mich., for the Construction Workers.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by MacKenzie Awning Company, Detroit, Michigan, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Max Rotenberg, Trial Examiner. Said hearing was held at Detroit, Michigan, on June 17, 1944. The Company, Upholsterers International Union and its agent, Tent, Canvas, & Display Decorators' Union, Local #34, A. F. L., herein collectively called the A. F. L., United Retail, Wholesale and Department Store Employees of America, C. I. O., herein called the United, and Local Industrial Union 98, United Construction Workers, C. I. O., herein called the Construction Workers, appeared, participated and 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

MacKenzie Awning Company, a Michigan corporation with its principal place of business located in Detroit, Michigan, is engaged in the manufacture of canvas coverings and the manufacture and erection of awnings. During the 12-month period preceding June 17, 1944, the Company purchased raw materials for manufacturing purposes valued at approximately \$100,000, of which approximately 75 percent was received from points outside the State of Michigan. During the same period the Company produced finished products valued at approximately \$185,000, of which about 75 percent was shipped to points outside the State of Michigan.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Upholsterers International Union and its agent, Tent, Canvas, & Display Decorators' Union, Local #34, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

United Retail, Wholesale and Department Store Employees of America, and Local Industrial Union 98, United Construction Workers, both affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 27, 1943, the Company and the A. F. L. executed a collective bargaining agreement covering certain of the former's employees. This agreement, by its terms, expired on May 1, 1944. However, it contained a clause providing for its renewal for a year, in the absence of notice to change any or all of its terms given by either party at least 60 days prior to its date of expiration. On February 28, 1944, the A. F. L. requested a conference for the purposes of discussing certain changes in the contract. On the same date the Company served upon the A. F. L. notice of intention to terminate. On April 28, 1944, the Construction Workers apprised the Company of its claim to represent certain of the latter's employees. A similar claim respecting other employees of the Company was made by the United on April 29. In view of conflicting claims regarding the

representation of its employees, the Company, on May 13, filed the petition herein.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the labor organizations involved herein represent a substantial number of employees in the respective units sought by them.¹

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 A. F. L. contends that all employees of the Company, including journeymen erectors, but excluding office clerical employees, salesmen, and all supervisory employees, constitute an appropriate unit.² The United contends that all inside shop employees of the Company, excluding employees in the erection department, office clerical employees, salesmen, and supervisory employees, constitute an appropriate unit; the Construction Workers contends that all employees in the erection department, including journeymen erectors, but excluding office clerical employees, salesmen, supervisory employees, and all other employees of the Company, constitute an appropriate unit. The Company takes no position with respect to the appropriate unit.

The record indicates that the Company has been bargaining collectively with the A. F. L. since 1941, with respect to the employees in the unit which the latter urges as appropriate. The combined units of the labor organizations affiliated with the C. I. O. are composed of the same employees whom the A. F. L. seeks to represent as a single unit. Despite some evidence to the effect that the units proposed by the United and the Construction Workers might be appropriate, we are of the opinion that the past collective bargaining history of the Company, indicating the feasibility of a single unit, is controlling in this proceeding.

¹ The Field Examiner's statement, using only those designations containing names of persons appearing on the Company's pay roll of May 19, 1944, may be summarized by the following chart:

Unit	Number of employees engaged therein	Designations submitted by--		
		A F L.	United	Construction workers
A. F. L.-----	27	18	7	5
United-----	13	11	7	0
Construction Workers-----	14	7	0	5

² This unit is similar to that contained in the contract of October 27, 1943, between the Company and the A. F. L.

Accordingly, we find that all employees of the Company, including journeymen erectors, but excluding office clerical employees, salesmen, 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

As previously noted, the combined units sought by the United and Construction Workers embrace the employees sought by the A. F. L. as a single unit. At the hearing the Construction Workers and the United agreed, in the event the unit sought by the A. F. L. were found to be appropriate, to appear jointly on the ballot as the "C. I. O." Under these circumstances, 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, to determine whether they desire to be represented by the A. F. L., or by the C. I. O., or by neither of these organizations.³

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 MacKenzie Awning Company, Detroit, Michigan, 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 Seventh 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

³ Since no contract exists at the present time between the A. F. L. and the Company, the former's objection to the direction of an election is without merit.

The A. F. L. contended that eligibility to vote in the election should be determined as of the pay-roll period immediately preceding May 1, 1944; the United and the Construction Workers contended that eligibility should be determined as of the date of the hearing. None of the labor organizations offered reasons in support of its contention sufficient to warrant a departure from our customary procedure.

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 Upholsterers International Union and its agent, Tent, Canvas, & Display Decorators' Union, Local #34, affiliated with the American Federation of Labor, or by the C. I. O.,⁴ for the purposes of collective bargaining, or by neither.

⁴ Should the C. I. O. win the election, it will be certified as "United Retail, Wholesale and Department Store Employees of America, and Local Industrial Union 98, United Construction Workers, both affiliated with the Congress of Industrial Organizations."