

In the Matter of THE AMERICAN FORK AND HOE COMPANY and UNITED
STEELWORKERS OF AMERICA, CIO

Case No. 8-R-1556.—Decided August 4, 1944

Messrs. Herman A. Bayless, and Pearl H. Boerngen, of Cincinnati,
Ohio, for the Company.

Mr. James P. Griffin, of Youngstown, Ohio, for the CIO.

Mr. A. P. Nobozny, of Cleveland, Ohio, for the I. A. M.

Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of The American Fork and Hoe Company, Conneaut, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Cleveland, Ohio, on June 29, 1944. The Company and the CIO and International Association of Machinists, A. F. L., herein called the I. A. M.,¹ 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. At the hearing, the I. A. M. moved to dismiss the petition on the ground that an existing contract constitutes a bar to the instant proceeding. The motion was referred to the Board by the Trial Examiner. For reasons stated in Section III, *infra*, the motion is denied. The Trial Examiner's rulings made at the hearings 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:

¹ Apparently Lodge 1454 of the I. A. M. is the labor organization more particularly concerned herein. The Lodge and its parent are collectively referred to as the I. A. M.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The American Fork and Hoe Company, an Ohio corporation with its principal office in Cleveland, Ohio, is engaged in the manufacture of farm, garden, and industrial tools. The Company operates 18 plants located in various parts of the United States. This proceeding involves the Company's Conneaut Shovel Works located at Conneaut, Ohio. During the calendar year 1943, the Company purchased for the Conneaut Shovel Works raw materials valued at approximately \$200,000, of which 40 percent was shipped from points outside the State of Ohio. During the same period, the Conneaut Shovel Works produced finished goods valued at approximately \$786,000, of which over 75 percent was shipped to points outside the State of Ohio.

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

II. THE ORGANIZATIONS INVOLVED

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

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

As a result of a consent election held under the auspices of the Board in 1941, the I. A. M. was selected by the Company's production and maintenance employees as their exclusive bargaining representative. Subsequently, on August 1, 1941, the Company and the I. A. M. entered into a collective bargaining agreement which was renewed from year to year until August 1, 1943. Prior to the expiration of this agreement, the I. A. M. notified the Company that it wished to commence negotiations for a new contract. During the ensuing negotiations certain issues concerning wages and vacation rights were submitted to the National War Labor Board for determination. On January 18, 1944, the National War Labor Board issued a directive order concerning all disputed matters. Thereafter, on April 14, 1944, the Company and the I. A. M. entered into a collective bargaining agreement retroactively effective as of August 1, 1943, to remain in force until August 1, 1944, and subject to automatic renewal from year to year in the absence of notice given by either party 30 days prior to any anniversary date, of a desire to change or abrogate the contract.

On May 16, 1944, the CIO requested recognition as the exclusive bargaining representative for the Company's production and maintenance employees at the Conneaut plant. On June 21, 1944, the Company replied that, since it was operating under a current collective bargaining agreement with the I. A. M., it could not recognize the CIO.

It is urged by the I. A. M. that its existing contract serves to bar the instant proceeding. Since, however, the CIO apprised the Company of its claim to representation prior to the operative date of the automatic renewal clause contained in the contract, it is clear that the contract does not preclude a determination of representatives.²

It is also asserted, in substance, by the I. A. M., that the doctrine of the *Allis-Chalmers* case³ is applicable to the instant proceeding because resort was had to the processes of the National War Labor Board and, consequently, the petition should be dismissed. We do not agree. The I. A. M. is not a newly recognized representative which was deprived of a reasonable opportunity to secure for the employees the benefits of representation, as evidenced by a collective bargaining contract, by delay caused by the submission of unsettled matters to the National War Labor Board for determination. Since 1941, the I. A. M. has acted on behalf of the Company's employees. In that year it secured a collective bargaining agreement with the Company which was renewed until 1943. Therefore, we are of the opinion that no bar exists to an immediate determination of representatives.⁴

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the CIO 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

We find, in agreement with a stipulation of the parties, that all production and maintenance employees at the Company's Conneaut plant,

² *Matter of Erie City Iron Works*, 47 N. L. R. B. 381. Despite the International's assertion that Lodge 1454 had no power to terminate the agreement signed in 1944, we note that Lodge 1454, the signatory to the agreement, gave notice to the Company on June 23, 1944, that it desired to terminate the agreement.

³ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

⁴ See *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268.

⁵ The Field Examiner reported that the CIO submitted 116 authorization cards, all of which bore apparently genuine original signatures; and that the names of 111 persons appearing on the cards were listed on the Company's pay roll of June 15, 1944, which contained the names of 137 employees in the alleged appropriate unit. The I. A. M. relies on its contract with the Company as evidence of interest in this proceeding.

including watchmen,⁶ but excluding clerical employees and 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 purpose 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 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The American Fork and Hoe Company, Conneaut, Ohio, 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 Eighth 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 United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

⁶The Company employs three watchmen at its Conneaut plant. These employees are neither armed nor uniformed, and have been bargained for by the Company and the I. A. M. as part of the unit covered by the agreements made between them.