

In the Matter of CONANT BALL COMPANY and LOCAL 154, UNITED
FURNITURE WORKERS OF AMERICA (CIO)

Case No. 1-R-1919.—Decided August 11, 1944

Mr. Samuel M. Salny, of Fitchburg, Mass., for the Company.
Grant and Angoff, by Mr. Sidney S. Grant, of Boston, Mass, for
the Union.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 154, United Furniture Workers of America (CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Conant Ball Company, Gardner, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leo J. Halloran, Trial Examiner. Said hearing was held at Gardner, Massachusetts, on July 6, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues; and to file briefs with the Board. At the hearing the Company moved for dismissal of the petition on the ground that a valid and subsisting contract between it and the Union, covering the employees in the unit petitioned for, constitutes a bar to this proceeding. The Trial Examiner reserved ruling upon this motion for the Board. For reasons stated in Section III, *infra*, we hereby deny the motion. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

57 N. L. R. B., No. 191.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Conant Ball Company is a Massachusetts corporation engaged at plants located in Templeton and Gardner, Massachusetts, in the manufacture of colonial reproduction furniture. The instant proceeding concerns only the Company's plant at Gardner, Massachusetts. The principal raw materials used by the Company are lumber, steel, paint, and varnish. During the calendar year 1943, the Company purchased approximately \$150,000 worth of these raw materials, of which approximately 90 percent was shipped from points outside the Commonwealth of Massachusetts to the Company's plants. During the same period the Company manufactured approximately \$300,000 worth of finished products, of which about 90 percent was shipped from its plants to points outside the Commonwealth of Massachusetts.

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

II. THE ORGANIZATION INVOLVED

Local 154, United Furniture 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

On March 2, 1942, the Union and the Company entered into a collective bargaining contract covering certain of the Company's employees, which, by its terms, was to remain in effect until March 2, 1943, and "from year to year thereafter, unless either party shall notify the other . . . of the proposed termination, changes or alterations thirty days before the expiration date hereof, or before February 1 of any subsequent year." This contract continued in effect without change until May 8, 1943, at which time the contracting parties executed a supplementary agreement providing for certain changes in the existing agreement and formally extending its effective term to May 1, 1944, and from year to year thereafter in the absence of notice of "proposed termination, change or alteration" given by either party thirty days prior to any anniversary date of the contract.

as amended. On or about March 28, 1944, the Union advised the Company in writing of its desire for a "new" contract. By letter dated March 29, 1944, the Company informed the Union of its willingness to discuss any proposed changes in the current contract. Thereafter, the Union submitted to the Company a memorandum of the proposed changes. Under date of April 24, 1944, the Company wrote the Union requesting proof that it currently represented a majority of the Company's employees in the contract unit. On April 27, 1944, the Company and the Union executed a document which extended their existing contract to July 1, 1944, "without prejudice to the rights of either of the parties hereto had this extension not been executed and . . . subject to cancellation or termination by mutual agreement at any time prior to July 1, 1944." On May 18, 1944, the Union filed its petition herein.

The Company contends that the Union's letter of March 28, 1944, although timely, did not stay the operation of the contract's automatic renewal clause, since it did not contain a request for termination of the contract. Therefore, contends the Company, the contract automatically renewed and constitutes a bar to this proceeding. We cannot agree. The Union's letter of March 28, 1944, contains the following unequivocal language:

We are . . . informing you that your employees have requested . . . some changes in our present Agreement, and in the near future we will present to you a copy of the proposed new contract as drawn up by your employees.

In our opinion this language clearly indicated an intent upon the part of the Union to terminate the then existing contract and substitute therefor a new agreement. The Company was apparently of the same opinion when it subsequently requested proof that the Union still represented a majority of its employees and when it entered into the extension agreement of April 27, 1944. This latter agreement, moreover, at most merely extended the original contract to July 1, 1944, a date which is now past. For these reasons we conclude that no bar to a present determination of representatives exists.

A statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.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.

¹ The Field Examiner reported that the Union submitted a current ledger book containing the names of 64 dues-paying members and that there are 90 employees in the unit for which the Union is petitioning.

IV. THE APPROPRIATE UNIT

The Union seeks a unit embracing all employees of the Company's plant at Gardner, Massachusetts, excluding executives, superintendents, supervisory employees with the power effectively to recommend hiring, firing, or disciplining of employees, salesmen, and office and clerical employees. The unit established by the afore-mentioned contract between the parties covered "all production employees with the following exceptions: Executives, salesmen, maintenance, watchmen, truck drivers, and engineers." The Company opposes the inclusion in the proposed unit of maintenance employees, watchmen,² truck drivers, and engineers,³ contending that the contract unit should not be altered. We are of the opinion that the Company's position is well taken. The unit established by contract between the Company and the Union expressly excluded these employees. The record contains no evidence as to the number of maintenance employees, watchmen, truck drivers, and engineers employed by the Company nor does it disclose whether any such employees are members of the Union or have designated it as their bargaining representative. In view of the limited amount of evidence in the record concerning these employees, we are persuaded not to disturb the contract unit. Accordingly, we shall exclude maintenance employees, watchmen, truck drivers, and engineers from the appropriate unit. Our finding in this respect, however, shall not preclude a later determination, based upon a new petition and a more comprehensive record, that these employees may be afforded opportunity to vote as to their inclusion in the larger unit herein found appropriate.

We find that all employees of the Company's plant at Gardner, Massachusetts, excluding maintenance employees, watchmen, truck drivers, engineers, salesmen, office and clerical employees, executives, superintendents, 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 Elec-

² None of the Company's watchmen is militarized

³ The engineers are apparently firemen and not professional or technical employees.

tion 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 Conant Ball Company of Gardner, Massachusetts, 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 Local 154, United Furniture Workers of America (CIO), for the purposes of collective bargaining.

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