

In the Matter of O. W. SIEBERT COMPANY and LOCAL 154, UNITED
FURNITURE WORKERS OF AMERICA (CIO)

Case No. 1-R-1921.—Decided August 11, 1944

Mr. Samuel M. Salmy, of Fitchburg, Mass., for the Company.
Grant and Angoff, of Boston, Mass., by Mr. Sidney S. Grant, 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 O. W. Siebert 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. At the hearing the parties stipulated, and it is hereby directed, that the evidence adduced in *Matter of Conant Ball Company*,¹ insofar as pertinent, be incorporated in and made a part of the record in this case. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ Case No. 1-R-1919, 57 N. L. R. B. 1262.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

O. W. Siebert Company is a Massachusetts corporation engaged at a plant located in Gardner, Massachusetts, in the manufacture of baby carriages. During the calendar year 1943, the Company purchased raw materials consisting of lumber, fiber, and steel valued in excess of \$150,000 of which approximately 80 percent was shipped to the Company's plant from points outside the Commonwealth of Massachusetts. During the same period, the Company manufactured over \$300,000 worth of finished products, of which approximately 90 percent was shipped 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 13, 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 June 1, 1943, and "from year to year thereafter unless either party shall notify the other in writing by registered mail of proposed termination, changes, or alterations thirty days before the expiration date hereof or before June 1 of any subsequent year." On March 19, 1943, the contracting parties executed a supplementary agreement providing for certain changes in the existing contract, including a change of the expiration date to May 1, 1944, and omitting the automatic renewal clause, but providing that upon the written request of either party made 30 days prior to the expiration date, the parties would commence negotiations for a new contract. On April 7, 1944, the Union advised the Company in writing of its desire to renew the contract with certain changes. Also in this letter the Union admitted that due to an error in its records it had thought the expiration date of the contract was June 1, 1944, rather than May 1, 1944, and requested the Company to overlook this error which it claimed to have been made in good faith. On April 10, 1944, the Company, in answer to the Union's letter,

informed the Union that it had no wish to take advantage of the error obviously made by the Union in good faith. Thereafter on April 25, 1944, the Union submitted to the Company a memorandum of the proposed changes it desired to make in the "renewal agreement." On April 26, 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.

Apparently neither of the parties contends that there is now in effect any bargaining contract which constitutes a bar to this proceeding. Although the Company predicates its motion for dismissal of the petition upon the continued existence of the March 13, 1942, contract, as amended, it does not claim that this contract is now in force, but asserts that it filed the motion in order to obtain a ruling by the Board that the contract has in fact expired. Under the terms of the supplemental agreement dated March 19, 1943, the expiration date of the contract between the parties was definitely stated as May 1, 1944, a date now past. The most the parties did by their subsequent action was to extend that agreement to July 1, 1944, a date which is now also past. Consequently, since the contract is not now in effect, it cannot constitute a bar to a determination of representatives at this time.

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.²

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 Union seeks a bargaining unit comprised of all employees of the Company, excluding executives, superintendents, foremen, salesmen, and office and clerical employees. The unit established by the aforementioned contract between the parties covered "all employees except executives, superintendents, firemen, salesmen, office employees, foremen, engineers, and truck drivers." The Company opposes the inclu-

² The Field Examiner reported that the Union submitted a current ledger book containing the names of 108 dues-paying members and that there are approximately 180 employees in the unit for which the Union is petitioning.

sion in the proposed unit of firemen, engineers,³ and truck drivers, contending that the contract unit should not be altered. For reasons stated in the *Conant Ball Company* case, mentioned above, we shall exclude the firemen, engineers, and truck drivers employed by the Company 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, excluding firemen, engineers, truck drivers, salesmen, office and clerical employees, executives, superintendents, foremen, 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 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 O. W. Siebert Company, 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

³ The engineers are apparently not professional or technical employees.

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.