

In the Matter of NICHOLS & STONE COMPANY and LOCAL 154, UNITED
FURNITURE WORKERS OF AMERICA (CIO)

Case No. 1-R-1922.—Decided August 11, 1944

Mr. Samuel M. Salny, 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 a 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 Nichols & Stone 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.
57 N. L. R. B., No. 194.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Nichols & Stone Company is a Massachusetts corporation engaged at Gardner, Massachusetts, in the manufacture of wooden chairs and other wood products. During the calendar year 1943, the Company used raw materials, consisting of wood, steel, paint, and shellac, valued in excess of \$75,000, of which approximately 80 percent was purchased and shipped to the Company's plant from points outside the Commonwealth of Massachusetts. During the same period, the Company manufactured approximately \$200,000 worth of finished products, of which about 90 percent was shipped from the Company's plant 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 April 28, 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 for 1 year and "from year to year thereafter unless either party desires changes and shall notify the other party thirty days prior to the expiration date in writing by registered mail." Since neither party gave such notice, the contract was automatically renewed in 1943. On March 20, 1944, the Union advised the Company in writing of its desire for a "new" contract. By letter dated March 28, 1944, the Company informed the Union of its willingness to discuss any proposed changes in the current contract. Thereafter, on April 5, 1944, the Union submitted to the Company a memorandum of the proposed changes to be included in the new contract. On 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. Three days later, on April 27, 1944, the Company and the Union executed a document by which

they agreed to extend 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 20, 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 20, 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."

For reasons stated in the *Conant Ball Company* case, mentioned above, we conclude that no bar to a present determination of representation 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.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 unit embracing all employees of the Company's plant at Gardner, Massachusetts, excluding executives, superintendents, foremen, salesmen, and office and clerical employees. The unit established by the afore-mentioned contract between the parties covered "all of [the Company's] employees except executives, salesmen, supervisors, foremen, assistant foremen, watchmen, engineers, truck drivers, and office and clerical help." The Company opposes the inclusion in the proposed unit of watchmen,³ engineers,⁴ and truck drivers, contending that the contract unit should not be altered. For reasons stated in the above-cited *Conant Ball Company*

² The Field Examiner reported that the Union submitted a current ledger book containing the names of 35 dues-paying members and that there are approximately 70 employees in the unit for which the Union is petitioning.

³ None of the Company's watchmen is militarized.

⁴ The engineers are apparently firemen and not professional or technical employees.

case, we shall exclude the watchmen, truck drivers, and engineers 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's plant at Gardner, Massachusetts, excluding watchmen, truck drivers, engineers, salesmen, and all other supervisory employees with authority to hire, men, office and clerical employees, executives, superintendents, forepromote, 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 3, 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 Nichols & Stone 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 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.