

In the Matter of TROJAN POWDER COMPANY and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA

Case No. 4-R-1420.—Decided August 19, 1944

Kirlin, Campbell, Hickox, Keating & McGrann, by *Mr. James H. Herbert*, of New York City, and *Mr. Karl Y. Donecker*, of Allentown, Pa., for the Company.

Messrs. John Reichwein and Mark C. Kopp, of Philadelphia, Pa., for the Union.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Trojan Powder Company, Allentown, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Allentown, Pennsylvania, on July 18, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the commencement of the hearing, the Company moved to dismiss this proceeding on the grounds, *inter alia*, that a preliminary investigation had not disclosed that the Union had sufficient representation among its employees to justify the Board in holding a hearing or proceeding with an election. Varying its grounds, the Company reiterated this motion during the course of the hearing, and in its brief. For reasons which appear in Section III, below, the motion is denied. 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. The Company's request for oral argument is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Trojan Powder Company is engaged in the manufacture of high explosives, powder, and chemicals, at its plant at Seiple, Pennsylvania, the only plant of the Company involved in this proceeding. The Company ships from its plant to points outside Pennsylvania finished products weighing in excess of 500,000 pounds and receives at its plant from points outside Pennsylvania raw materials weighing in excess of 500,000 pounds.

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

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Since 1939 the Union has been conducting organizational activities among employees at the Company's Seiple plant. In 1941 the Union filed charges, alleging that the Company has engaged in unfair labor practices in violation of Section 8 (1) and (5) of the Act. On June 26, 1942, on complaint proceedings based upon these charges, the Board issued a Decision and Order, finding that the Company had interfered with, restrained, and coerced its employees in the exercise of rights guaranteed under the Act, and ordering that the Company cease and desist from its unfair labor practices and take certain remedial steps designed to dispel their effect.¹ The Company failed to comply with the Board's Order, and the Board thereafter filed a petition for enforcement in the United States Court of Appeals for the Third Circuit. On April 6, 1943, the petition for enforcement was granted.² Thereupon the Company filed a petition for certiorari in the United States Supreme Court.

On May 17, 1943, the Union filed with the Regional Director a petition, and thereafter an amended petition, for investigation and certification of representatives in Case No. R-5761. On August 2, 1943, the Board directed that an election be held among employees of the Seiple plant in a unit which the Board found, and which the Com-

¹ *Matter of Trojan Powder Company*, 41 N. L. R. B. 1308. Upon the decision of two members of the Board that the Union did not represent a majority of employees of the Company in an appropriate bargaining unit, the Board dismissed the complaint with respect to allegations of refusal to bargain, in violation of Section 8 (5) of the Act.

² *N. L. R. B. v. Trojan Powder Company*, 135 F. (2d) 337.

pany and the Union substantially agreed, was appropriate for bargaining.³ At the election 710 eligible employees cast valid ballots, of which 324 were for, and 386 were against, the Union. On September 26, 1943, the Board, finding that no bargaining representative had been designated by a majority of employees in the appropriate unit, dismissed the proceeding.

On October 18, 1943, the Company's petition for certiorari, filed in the United States Supreme Court, as noted above, was denied.⁴ On November 6, 1943, the Company posted notices as ordered by the Board on July 26, 1942. These notices remained posted for sixty (60) days.

On December 26, 1943, the Union filed a new petition for investigation and certification of representatives covering employees at the Seiple plant in Case No. 4-R-1330, alleging that it represented a majority of employees in the unit previously found by the Board to be appropriate. On or about December 29, 1943, the Union served on the Company a formal request for recognition as bargaining representative of these employees and for a bargaining conference. The Company denied the request. The Union increased its efforts to extend its membership among employees at the plant. On February 14, 1944, the Company having complied with the Board's order, the complaint proceedings were formally closed. On April 13, 1944, the Union, with the consent of the Regional Director, withdrew without prejudice its petition for investigation in Case No. 4-R-1330, and on April 26, 1944, filed the petition in the instant proceedings.⁵ Before filing this petition the Union made no formal request upon the Company for recognition as exclusive bargaining representative of employees covered therein. The Company, however, takes the position that the Union does not represent a majority of its employees and, at the hearing, affirmed its position that it does not recognize the Union as their bargaining representative.

In support of its claim to represent employees in its proposed unit, the Union filed in the Regional Office 507 authorization cards purporting to be signed by employees of the Company. The Field Examiner, to whom the case was assigned for preliminary investigation, checked these cards against the Company's Seiple plant pay roll for April 30,

³ *Matter of Trojan Powder Company*, 52 N. L. R. B. 24.

⁴ 320 U. S. 768.

⁵ On June 30, 1944, the Company filed with the Board at Washington, D. C., a motion requesting that procedure upon the instant petition be stayed and that the Board grant oral argument prior to any further action instituted by the Regional Director relating to the instant petition. In support of its motion, the Company alleged that the Union was not empowered under the Act to file petitions at such short intervals and that the Regional Office had no authority to entertain such petitions. On July 5, 1944, the Board denied the motion, and, as indicated above, on July 18, 1944, a hearing was held upon the instant petition.

1944, which listed 668 employees in the appropriate unit for employees at this plant, and found that only 288 cards of those submitted bore the names of employees on this pay roll.⁶ He reported that 7 of these cards were undated; that 1 was dated September 1943; that 141 were dated in October, November, and December 1943; and that 139 were dated in January, February, March, and April 1944. The Company contends that the showing of representation made by these cards, assuming that the signatures are genuine,⁷ is insufficient indication of the Union's substantial representation among the Company's employees to justify the Board in directing an election among them at this time. We do not agree. The Company calls to our attention that the number of cards bearing names of employees on the April 30 plant pay roll is considerably less than the number of votes cast for the Union in the election held in September 1943 in the prior representation proceeding. We note that between September 20, 1943 and April 30, 1944, 4 persons were hired at the Seiple plant, and approximately 72 quit or were discharged. It is perhaps true that the cards submitted by the Union do not positively indicate any appreciable gain in union strength among the Company's employees. In the absence of a background of unfair labor practices on the part of an employer, or other unusual circumstances to which the Board may give special weight, we require that an organization seeking a second election in a short interval of time after an election defeat will present definite evidence of increased strength among the employees concerned, in order that the Board may be assured that a second election held among them will not be in vain.⁸ Against a background of unfair labor practices, however, the Board has set no specific requisites for the holding of a new election other than a reasonable assurance that employees in the appropriate unit may express their desires with respect to a bargaining representative without interference from their employer. Disregarding the undated cards and the card dated September 1943, which may or may not have been signed subsequent to the election in the prior representation proceeding conducted by the Board on September 20, 1943, it appears that on April 30, 1944, the Union had authorization cards indicating that approximately 40 percent of employees in the appropriate unit had

⁶ The original petition filed by the Union on April 26, 1944, covered employees at two plants of the Company. We may assume that the cards submitted in support of the Union's petition were cards received from employees at both plants. On June 16, 1944, the Union amended its original petition to restrict the bargaining unit to employees at the Seiple plant.

⁷ Prior to the hearing the Company desired that the signatures upon these cards be checked by direct comparison with facsimile signatures of employees in the Company's possession. The Regional Office declined to make this comparison. We find no prejudice to the Company occasioned by this ruling.

⁸ *Matter of New York Central Iron Works*, 37 N. L. R. B. 894; *Matter of Knott & Garluis*, 44 N. L. R. B. 477.

designated the Union as their bargaining representative.⁹ It is now almost a year since the Board conducted an election among employees at the Seiple plant. No election has been held among these employees since the Company has complied with the Board's order in the complaint proceedings. Experience has proven that where an employer has committed unfair labor practices and has not taken prompt remedial steps to offset their effect, employees are reluctant to commit themselves to the signing of authorization cards. When the effects of unfair labor practices have been dissipated, they may designate a labor organization as their bargaining representative when opportunity is given to them to express their desires in a secret election conducted under Board auspices. The Company admits that the Union has not relaxed its efforts to organize the Company's employees since its defeat in September 1943. Under these circumstances, we believe that the showing made by the Union is sufficient to justify us in proceeding with an election at this time and that an election should be held promptly to effectuate the policies of the Act.

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 accordance with the stipulation of the parties, that all hourly paid production and maintenance employees, including working leaders and watchmen, at the Company's Seiple, Pennsylvania, plant, but excluding all salaried employees, inspectors, laboratory employees (employees working in the laboratory or testing fields), office employees, clerical employees, guards, farm workers, 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.

⁹ The record indicates that between May 1 and June 30, 1944, 1 employee was hired at the plant, 27 employees quit or were discharged, and 9 were laid off for vacations, illness, or military service. The Company alleges that it is not unreasonable to assume that some of the cards checked by the Field Examiner were signed by employees who have left the Company's service and will not be eligible to vote in any election which the Board may direct. The Company contends that therefore a recheck of the Union's cards should be made. We see no advantage in this procedure which would only delay the holding of an election at the plant. Employees laid off for the causes enumerated are eligible to vote if they present themselves at the polls on the day of the election. Employees who quit their employment or are discharged may be reinstated prior to an eligibility date and thus, as employees, become eligible for voting in an election. Successive recheckings from time to time to determine whether employees who sign union authorization cards have left the Company's employ would cause futile delay, and would not necessarily be conclusive on the ultimate eligibility of such persons to vote in an election.

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 Trojan Powder Company, Allentown, Pennsylvania, 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 Fourth 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 the 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 Direction, to determine whether or not they desire to be represented by District 50, United Mine Workers of America, for the purposes of collective bargaining.

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