

In the Matter of TRICO PRODUCTS CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

Case No. 3-R-822.—Decided August 21, 1944

Mr. Daniel J. Kenfick, Jr., of Buffalo, N. Y., for the Company.

Mr. David Diamond, of Buffalo, N. Y., for the UAW.

Mr. Holland B. Williams, of Buffalo, N. Y., for the Association.

Mr. Dan J. Omer, of Buffalo, N. Y., for the IAM.

Mr. Samuel Shilen, of Buffalo, N. Y., for the Metal Polishers.

Miss Ruth Rusch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., herein called the UAW, alleging that a question affecting commerce had arisen concerning the representation of employees of Trico Products Corporation, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on July 6, 1944. The Company, the UAW, Trico Workers Association, herein called the Association, International Association of Machinists, A. F. of L., herein called the IAM, and Metal Polishers, Buffers, Platers and Helpers Union, A. F. of L., herein called the Metal Polishers, appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Trial Examiner reserved several motions for the Board to determine. The Board, for reasons hereinafter discussed, hereby denies

¹At the beginning of the hearing, the Trial Examiner granted motions to intervene by the Association, the IAM, and the Metal Polishers.

the Company's motion to have the petition dismissed on the grounds that there is an existing contract between the Company and a labor organization and that there is no substantial representation shown by UAW. For reasons hereinafter stated, the UAW's motion opposing the IAM's request for a place on the ballot in any forthcoming election on the ground that the IAM has made an insubstantial showing of interest is hereby denied. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a New York corporation engaged in the manufacture of automobile windshield wipers, automobile accessories, and war materials; its factory and main office are located in Buffalo, New York. From January 1, 1943, to December 31, 1943, the Company used raw materials valued in excess of \$1,000,000, of which 85 percent was shipped from sources outside the State of New York. For the same period, the Company manufactured finished products in excess of \$9,000,000 in value, of which 90 percent was shipped to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Trico Workers Association is an unaffiliated labor organization, admitting to membership employees of the Company.

International Association of Machinists, and Metal Polishers, Buffers, Platers and Helpers are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 6, 1944, the U. A. W. sent the Company a letter, which the Company received on the same day, stating that it represented a substantial number of the Company's employees and requesting a meeting to discuss a contract. The Company replied that it was in

no position to recognize any labor organization until there is a certification by the Board in an appropriate unit.

At the hearing, the Company contended that its present contract with the Association is a bar to this proceeding. Since August 6, 1942, following a consent election conducted by the Board's Regional Office, the Company and the Association have had a contract covering the production and maintenance employees, except those in Departments 12 and 13. The contract was to continue from year to year from the sixth of August unless notice of desire to terminate was given to either party by the other sixty (60) days prior to the expiration of any yearly period. In the latter part of 1943, some changes in the contract were negotiated and the provisions which were not agreed upon were submitted to the National War Labor Board. On March 7, 1944, a Directive was issued by the National War Labor Board. On May 8, 1944, the provisions of the Directive, which were retroactive to August 6, 1943, were incorporated in the current contract. Since the UAW notified the Company of its claim to represent the employees in the contract unit more than 60 days prior to the anniversary date of the contract, we find that the contract is no bar to the present proceedings.

A statement of the Trial Examiner, introduced into evidence at the hearing, indicates that the UAW represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of the employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

² The Field Examiner's statement shows that the UAW submitted 562 cards, 453 of which contained the names of employees on the Company's pay roll of June 4, 1944; there are 83 cards dated January 1944; 63 dated February 1944; 69 dated March 1944; 74 dated April 1944; 78 dated May 1944; 73 dated June 1944, and 13 undated.

The Field Examiner's statement shows that the IAM submitted 183 cards, 137 of which contained the names of employees on the Company's pay roll of June 4, 1944. There were 75 cards dated July 1943, 24 dated August 1943, 2 dated September 1943, 3 dated October 1943; 8 dated November 1943; and 9 undated. We have denied the UAW's motion to exclude the IAM from participation in the election hereinafter directed, since we regard the IAM's showing as sufficient to entitle it to a place on the ballot.

The Association did not present any evidence of membership, but relies on its contract as proof of its representation.

The Metal Polishers disclaims all interest in the production and maintenance employees, excepting those in Departments 12 and 13, for whom it has a contract with the Company, and it entered an appearance so that there would be no infringement on the unit it represents.

The Company's pay roll listed 1,916 employees in the appropriate unit; approximately 350 of such listed employees are presently in the armed forces. The Company, contending that the employees in the armed services should be counted for the purpose of estimating the UAW's *prima facie* showing of interest, moved to dismiss the petition on the ground of insufficient showing. We have denied this motion inasmuch as we do not consider that the number of employees in military service must be added to the number of employees working in the plant for the purpose of evaluating the UAW's showing of interest, and, moreover, the Association's current contract with the Company is a closed-shop contract. See *Matter of Chicago Molded Products Corporation*, 49 N. L. R. B. 756.

IV. THE APPROPRIATE UNIT

We find, in accordance with the stipulation of the parties and the record, that all production and maintenance employees, including truck drivers, of the Company at its Buffalo, New York, plant, but excluding employees in Departments 12 and 13,³ office employees, laboratory employees, nurses, foremen, assistant 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. The Metal Polishers restricts its interest among the Company's employees to those employed in Departments 12 and 13. Since the employees in Departments 12 and 13 are excluded from the bargaining unit herein found appropriate, we shall make no provisions for the Metal Polishers to participate in the election.

Those eligible to vote in the election shall be 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 Trico Products Corporation, Buffalo, New York, 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 Third 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

³ See footnote 2, *supra*.

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 election, to determine whether they desire to be represented by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., by International Association of Machinists, A. F. of L., or by Trico Workers Association, for the purposes of collective bargaining, or by none of said organizations.

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