

In the Matter of UNITED WAREHOUSE & TERMINAL CORPORATION and
MEMPHIS INDUSTRIAL UNION COUNCIL, AFFILIATED WITH THE CIO

Case No. 15-R-1114.—Decided August 30, 1944

Mr. Leroy Marceau, for the Board.

Mr. W. Stewart McCloy, of Memphis, Tenn., and Mr. George Kamenow, of Detroit, Mich., for the Company.

Mr. W. A. Copeland, of Memphis, Tenn., for the Union.

Mr. Philip Licari, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Memphis Industrial Union Council, affiliated with the CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of United Warehouse & Terminal Corporation, Memphis, Tennessee, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Lawrence H. Whitlow, Trial Examiner. Said hearing was held at Memphis, Tennessee, on July 20, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Company moved to dismiss the petition on the ground that (1) the Company is not engaged in commerce within the meaning of the Act; and (2) the Union is not a labor organization within the meaning of the Act. The motion was referred to the Board by the Trial Examiner. For reasons stated in Sections I and II, *infra*, 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.

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

¹ At the hearing, on motion by the attorney for the Board, the petition and all other papers were amended so that the name of the Company would read "United Warehouse & Terminal Corporation"

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

United Warehouse & Terminal Corporation, a Tennessee corporation, is engaged in the operation of commercial warehouses in Memphis, Tennessee. The Company conducts its business in six separate warehouses located in various parts of the city of Memphis. Its warehouses contain a total of approximately 150,000 square feet of space. They are serviced by railroads apparently engaged in the transportation of goods to and from points outside the State of Tennessee. The Company's only commercial activity is the storing of goods belonging to manufacturing and commercial enterprises, some of which are located outside the State of Tennessee. The Company also stores materials for various agencies of the United States Government. In connection with its operations the Company receives goods at its warehouses, stores them, and subsequently, on order of the storer, releases them to carriers which receives them for delivery to consignees designated by the storers. The record reveals that approximately 50 percent of the goods stored by the Company's warehouses comes to it via common carrier.

Under these circumstances, we find, contrary to the Company's contention, that it is engaged in commerce within the meaning of the Act.²

II. THE ORGANIZATION INVOLVED

Memphis Industrial-Union Council, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.³

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁴

² See *Butler Bros. v. N. L. R. B.*, 134 F. (2d) 981 (C. C. A. 7), cert. denied, 320 U. S. 789.

³ The uncontradicted testimony of the Union's representative shows that the Memphis Industrial Union Council, CIO, is actively engaged in organizing the Company's employees for the purposes of collective bargaining.

⁴ The Field Examiner reported that the Union submitted 24 designation cards, of which 22 were dated March 1944, and 2 were dated April 1944. He further reported that there were approximately 28 employees in the alleged unit.

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 agreement of the parties, that all the employees of the Company at its warehouses in Memphis, Tennessee, excluding clerical employees, supervisors, foremen and subforemen with the right effectively to recommend hiring and discharging of employees, 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.⁵

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 United Warehouse & Terminal Corporation, Memphis, Tennessee, 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 Fifteenth 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

⁵ The Union's request to appear on the ballot as the "CIO" is hereby granted.

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 or not they desire to be represented by the CIO for the purposes of collective bargaining.

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