

In the Matter of DEMPSTER BROTHERS, INC. and UNITED STEEL-  
WORKERS OF AMERICA, C. I. O.

*Case No. 10-R-1242.—Decided September 9, 1944*

*Messrs. Thomas G. McConnell and Thomas G. Shea, of Knoxville, Tenn., for the Company.*

*Mr. Paul R. Christopher, of Knoxville, Tenn., for the Union.*

*Mr. Cecil D. Meek, of Knoxville, Tenn., for the Intervenors.*

*Mr. Ben Grodsky, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Dempster Brothers, Inc., Knoxville, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Knoxville, Tennessee, on August 2, 1944. The Company, the Union, and James R. Cruze and Fred Burnett, herein called the Intervenors, 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and here 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Dempster Brothers, Inc., is a Tennessee corporation having its principal place of business and offices in Knoxville, Tennessee, where it is engaged in the manufacture of dumpsters for truck bodies,

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steel pontoons, and scrap metal baling presses. During the last calendar year, the Company purchased approximately \$800,000 worth of raw materials, consisting mainly of steel prints, bars, and shapes. All of the raw materials were purchased and shipped from States other than the State of Tennessee to its Knoxville plant. During the same period, the Company manufactured, sold, and distributed approximately \$1,000,000 worth of finished products, all of which were shipped to points outside the State of Tennessee from its Knoxville plant.

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

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On June 6, 1944, the Union, by letter of that date, informed the Company that it represented a majority of the Company's employees and requested a meeting for the purpose of negotiating a contract. The Company's reply, not sent until after the petition in this proceeding had been filed, stated that it did not believe that the Union represented a majority and declared that the Union was not entitled to an election within so short a time after the election of October 28, 1943, which the Union lost.<sup>1</sup>

The Intervenor presented a petition bearing 143 apparently genuine signatures of employees. They allege that this number constitutes a clear majority of the employees of the Company. The petition denounces the efforts of the Union and protests the holding of an election. The text of the petition is set forth below.<sup>2</sup> The Intervenor does not hold themselves out as a "labor organization" within the meaning of Section 2 (5) of the National Labor Relations Act. The Company objects that the Union's petition is untimely in

<sup>1</sup> This was a consent election, Board Case No. 10-R-1018. Out of a total eligibility list of 257, 241 valid ballots were cast, of which 84 were for the Union and 157 were against the Union.

<sup>2</sup> We, the undersigned employees of Dempster Brothers, Inc., at Knoxville, Tennessee, have received information that the United Steel Workers of America (C. I. O.) Union is claiming that they have signed up as members of their union more than fifty per cent of Dempster employees and propose to ask for an election by which they hope to have you order that the Company recognize them as the exclusive bargaining agent for us employees in our dealings with the Company. We had an election on October 28, 1943, at which the Union was turned down by a vote of almost two-to-one. We state to you that the claim of the Union that they represent a majority is not true, and we sign below to protest the holding of any election. We are making this request to you because the Union's effort to organize always creates confusion, slows up work, causes loss of production, and loss of wages to us.

that there has been no major change since the date of the election of October 28, 1943, to warrant a new election.

Neither the Intervenor's contention nor the Company's has merit. It is the policy of the United States, as declared in Section 1 of the National Labor Relations Act, to encourage the practice and procedure of collective bargaining. More than 10 months have passed since the date of the last election. This, together with the showing of substantial representation made by Union indicating that it obtained additional designations since the consent election,<sup>3</sup> overshadows the considerations urged by the Company and the Intervenor as reasons for dismissing the petition.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit which it claims to be appropriate.<sup>5</sup>

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 contends that the appropriate unit should include all production and maintenance employees, including welders, welders' helpers, yardmen and shearers, painters, machine shop crew, carpenters, electricians, truck drivers, laborers, stockroom employees and janitors, but excluding all foremen and other supervisory employees, office and clerical employees, deputized guards, restaurant employees, and drafting room employees.

The Intervenor and the Company contend that the appropriate unit should include all employees, exclusive of executives, foremen, and supervisory employees with the right to hire and discharge. They base their contention upon the fact that all employees in their pro-

<sup>3</sup> See footnote 5, *infra*.

<sup>4</sup> See *Matter of General Aircraft Corporation*, 49 N. L. R. B. 917; *Matter of Automatic Products Company*, 40 N. L. R. B. 941; *Matter of Southport Petroleum Company*, 39 N. L. R. B. 257. See also *Matter of Greulce Bros & Company*, 53 N. L. R. B. 1042.

<sup>5</sup> The Field Examiner reported that the Union submitted 128 application cards bearing signatures; that the Company's pay roll contained the names of 233 employees in the alleged appropriate unit; and that the cards were dated: 6 in July 1944; 36 in June 1944; 81 in May 1944; and 5 prior to May 1944.

The Intervenor and the Company raise a question regarding the showing of the Union. They claim (1) that the Union's showing does not indicate that the Union at any time represented a majority of the Company's employees and (2) that the Union's showing is in any event vitiated by the Intervenor's petition which was circulated in June and subsequent to those of the petitioner's authorizations which are dated in May and prior to May. Those contentions are based upon an erroneous analysis of the basis for the requirement of a showing of union representation. The submission of cards is an administrative expedient adopted by the Board to determine for itself whether or not a question of representation has arisen. *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560. Proof of majority status is not necessary to raise a question concerning representation; it is only necessary to establish to the satisfaction of the Board that the Union represents a substantial number of employees in the unit found to be appropriate. *Matter of Grand Rapids Fibre Cord Company*, 56 N. L. R. B. 543.

posed unit are eligible to membership in the petitioning union and the further fact that there is no reason why there should be any division of the plant into separate units with separate bargaining agencies.

The record discloses that there are approximately 233 shop employees eligible to vote in the unit proposed by the Union. In addition there are 11 or 12 office and clerical employees, 3 deputized guards, 10 restaurant employees, and 2 drafting room employees who are draftsmen, who would also be included in the unit proposed by the Intervenor and the Company.

*Office and clerical employees:* Inasmuch as the work of office employees is substantially different from that of the production and maintenance employees, in accordance with our customary practices, we shall exclude them.<sup>6</sup>

*Deputized guards:* The deputized guards are not production or maintenance employees, nor do they have a close community of interest with such employees. We shall exclude them from the unit.<sup>7</sup>

*Restaurant employees:* The Company's restaurant is maintained in separate quarters between the factory and the general office buildings. The employees in question operate the restaurant, and prepare and serve food. They have no direct connection with the production and maintenance workers, and we shall exclude them.<sup>8</sup>

*Draftsmen:* The economic interests of technical employees, such as draftsmen, are on an entirely different plane from those of the production and maintenance employees. We shall, accordingly, exclude draftsmen from the unit.<sup>9</sup>

We find that all production and maintenance employees of the Company, including welders, welders' helpers, yardmen and shearers, painters, machine shop crew, carpenters, electricians, truck drivers, laborers, stockroom employees, and janitors, but excluding office and clerical employees, deputized guards, restaurant employees, draftsmen, 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 em-

<sup>6</sup> *Matter of Bristol Steel and Iron Works, Incorporated*, 47 N. L. R. B. 1429.

<sup>7</sup> See *Matter of American Armament Corporation*, 43 N. L. R. B. 834. In the instant case the Company does not require the guards to be deputized as a condition of their employment. However, the Board has excluded undeputized guards from production and maintenance units. See *Matter of Musgrove Mills*, 43 N. L. R. B. 780; and *Matter of Sullivan Dry Dock & Repair Corp.*, 37 N. L. R. B. 13.

<sup>8</sup> *Matter of Carrier Corporation*, 46 N. L. R. B. 1319.

<sup>9</sup> *Matter of Todd-Bath Iron Shipbuilding Corporation*, 45 N. L. R. B. 1367.

ployees 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 Dempster Brothers, Inc., Knoxville, 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 Tenth 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 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 United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.