

In the Matter of WILMOTH PAVING COMPANY, CARSON & GRUMAN COMPANY, E. B. DONALDSON & BROTHER, DONALDSON PAVING COMPANY AND MCGUIRE & ROLFE COMPANY, INC. and A. F. OF L. PAVING COUNCIL FOR THE DISTRICT OF COLUMBIA

Case No. 5-R-1577.—Decided September 13, 1944

Mr. George L. Weaster, of Baltimore Md., for the Board.

Mr. John J. Carmody, of Washington, D. C., for the Companies.

Mr. Robert A. Wilson, of Washington, D. C., for the A. F. of L.

Mr. Milford P. Jackson, of Baltimore, Md., and *Mr. Lewis Williams*, of Washington, D. C., for the C. I. O.

Messrs. Daniel Quigley and *John T. Oakley*, of Washington, D. C., for the U. M. W. A.

Miss Ruth Rusch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by A. F. of L. Paving Council for the District of Columbia, herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Wilmoth Paving Company, Carson & Gruman Company, E. B. Donaldson & Brother, Donaldson Paving Company and McGuire & Rolfe Company, Inc., Washington, D. C., herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Melton Boyd, Trial Examiner. Said hearing was held at Washington, D. C., on August 11, 1944. The Board, the Companies, the A. F. of L., the United Paving and Building Supply Workers, Local Industrial Union No. 1221, C. I. O., herein called the C. I. O., and the United Construction Workers, District 50, United Mine Workers of America, herein called the U. M. W. A., appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine

¹ At the beginning of the hearing, the Trial Examiner granted motions to intervene made by the C. I. O. and the U. M. W. A.

witnesses, and to introduce evidence bearing on the issues. The Trial Examiner reserved ruling for the Board on the Companies' motion to dismiss the petition on the ground that the A. F. of L. is not a labor organization within the meaning of the Act and is not capable of serving as a bargaining representative. For reasons hereinafter stated, 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

The Companies are paving contractors engaged in business in the District of Columbia and in counties immediately adjacent thereto in the States of Maryland and Virginia. The Companies use a substantial amount of materials which is shipped from points outside the District of Columbia.

The Companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

A. F. of L. Paving Council for the District of Columbia is a labor organization affiliated with the American Federation of Labor, authorized by its constituent local unions to bargain on behalf of their members, including employees of the Companies.²

United Paving and Building Supply Workers, Local Industrial Union No. 1221, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Companies.

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

III. THE QUESTION CONCERNING REPRESENTATION

The Companies have refused to grant recognition to the A. F. of L. as the exclusive bargaining representative of their employees until the A. F. of L. has been certified by the Board in an appropriate unit.

² The Companies deny that the A. F. of L. is a labor organization within the meaning of the Act, asserting that it is actually an association of labor organizations which cannot be a bargaining representative because it does not admit employees to membership. This contention is plainly without merit. See *Matter of Hamilton Realty Corporation*, 10 N. L. R. B. 858.

The Companies formerly had a bargaining contract with the C. I. O., covering the employees involved herein, which expired December 31, 1943. No new contract has since been negotiated.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found appropriate.³

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, 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 the Companies act in concert in bargaining collectively with their employees. It was further stipulated by all parties and we find, in accordance therewith and with the record, that all employees engaged by all the Companies in the District of Columbia and the counties immediately adjacent in the States of Maryland and Virginia, except office employees, watchmen, foremen, superintendents, assistant superintendents, 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.⁴

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

³ The Field Examiner and the Board's Attorney reported that the A. F. of L. submitted 216 cards. There are apparently 421 employees in the appropriate unit. There were 99 cards dated in 1943, 172 dated in 1944, and 45 were undated.

The C. I. O. submitted 229 application cards. All the cards, with the exception of 12, were dated in 1943.

U. M. W. A. submitted 81 application cards, all of which were dated in 1944.

⁴ This unit is substantially the same as the unit found appropriate by the Board in a prior proceeding involving the same parties, as well as certain additional employers who are no longer in business. See *Matter of Brenizer Trucking Company, et al.*, 44 N. L. R. B. 810.

⁵ In accordance with the request made by the A. F. of L., C. I. O., and U. M. W. A., at the hearing, we shall designate the A. F. of L. on the ballot as American Federation of Labor, Paving Council of the District of Columbia; the C. I. O. as United Paving and Building Supply Workers, Local 1221, C. I. O.; and the U. M. W. A. as United Construction Workers, affiliated with the United Mine Workers.

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 Wilmoth Paving Company, Carson & Gruman Company, E. B. Donaldson & Brother, Donaldson Paving Company and McGuire & Rolfe Company, Inc., Washington, D. C., 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 Fifth 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 of the said Companies in the unit found appropriate in Section IV, above, who were employed during the said 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 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 American Federation of Labor, Paving Council of the District of Columbia, by United Paving and Building Supply Workers, Local 1221, C. I. O., or by United Construction Workers, affiliated with the United Mine Workers, for the purposes of collective bargaining, or by none.