

In the Matter of THE FLINTKOTE COMPANY and WAREHOUSE AND DISTRIBUTION WORKERS UNION, LOCAL 207, I. L. W. U., C. I. O.

Case No. 15-R-1162.—Decided September 16, 1944

Mr. W. M. Lehmkuhl, of New Orleans, La., for the Company.

Mr. Howard Goddard, of New Orleans, La., for the I. L. W. U.

Messrs. Robert L. Soule and M. M. Mandot, of New Orleans, La., for the Federal.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Warehouse and Distribution Workers Union, Local 207, I. L. W. U., C. I. O., herein called the I. L. W. U., alleging that a question affecting commerce had arisen concerning the representation of employees of The Flintkote Company, New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on August 21, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of Federal Labor Union No. 22753, A. F. of L., herein called the Federal, to intervene. The Company, the I. L. W. U., and the Federal appeared, participated, and 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. All parties were afforded 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 Flintkote Company is a Massachusetts corporation with its principal office at New York City. We are here concerned with its
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plant at New Orleans, Louisiana, where it is engaged in the manufacture of paper goods and asphaltic materials. The Company manufactures products at its New Orleans plant valued in excess of \$5,000,000 annually, over 75 percent of which is shipped to points outside the State of Louisiana.

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

II. THE ORGANIZATIONS INVOLVED

Warehouse and Distribution Workers Union, Local 207, I. L. W. U., is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Federal Labor Union No. 22753 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 6, 1944, the I. L. W. U. requested the Company to recognize it as the exclusive collective bargaining representative of the employees at the New Orleans plant. The Company refused this request.

On September 12, 1943, the Company and the Federal entered into an exclusive collective bargaining contract. The contract provides that it shall remain in effect until September 12, 1944, and from year to year thereafter unless notice of a desire to terminate is given by either party thereto not less than 30 days prior to any annual expiration date. The Federal contends that its contract is a bar to this proceeding and urges that the petition be dismissed. Inasmuch as the I. L. W. U. made its claim upon the Company prior to August 12, 1944, the date upon which the contract would have automatically renewed itself, we find the position of the Federal to be untenable.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the I. L. W. U. represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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.

¹ The Field Examiner reported that the I. L. W. U. presented 341 authorization cards bearing the names of persons who appear on the Company's pay roll of July 22, 1944. There are approximately 550 employees in the appropriate unit. The Federal did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

IV. THE APPROPRIATE UNIT

We find, in substantial accord with a stipulation of the parties, that all hourly paid employees at the New Orleans plant of the Company, excluding clerical employees and all 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.²

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. The I. L. W. U. requests that the pay roll as of the date of the hearing be used to determine eligibility to vote. Inasmuch as no persuasive reason appears as to why we should depart from our usual practice, we shall direct that those eligible to vote 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 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 The Flintkote Company, New Orleans, Louisiana, 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

² This is substantially the same unit that is provided for in the contract between the Company and the Federal.

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 they desire to be represented by Warehouse and Distribution Workers Union, Local 207, I. L. W. U., affiliated with the Congress of Industrial Organizations, or by Federal Labor Union No. 22753, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.