

In the Matter of EVERGREEN MILLWORKS AND MANUFACTURING COMPANY
and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF
AMERICA, C. I. O.

Case No. 10-R-1254.—Decided September 23, 1944

Mr. Charles Gaines, Jr., of Jacksonville, Fla., for the Company.

Mr. Dugan Boartfield, of Jacksonville, Fla., for the Union.

Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of the Evergreen Millworks and Manufacturing Company, Jacksonville, Florida, 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 Jacksonville, Florida, on August 14, 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. 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 COMPANY

Evergreen Millworks and Manufacturing Company is a Florida corporation maintaining its principal office and plant in Jacksonville, Florida, where it manufactures ammunition boxes and shipping con-

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tainers. The Company purchases raw materials consisting of lumber, nails, box hardware, and staining materials at an approximate cost of \$8,600 per week. About two-thirds of the raw materials used in the manufacturing process is purchased from points outside the State of Florida and shipped to the Jacksonville plant of the Company. Each week the Company manufactures shipping containers and ammunition boxes valued at approximately \$12,000, all of which are sold and delivered to points outside the State of Florida.

The Company concedes, and we find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Industrial Union of Marine and Shipbuilding Workers 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

The Union, in a telephone conversation with the Company's plant manager on June 30, 1944, requested recognition as the exclusive bargaining representative of the Company's employees, but the request was refused by the Company's plant manager because he was not familiar with the Company's labor relations policies. The plant manager suggested that the Union representative speak to the chairman of the Board of the Company. An attempt by the Union to get in touch with the chairman was unsuccessful.

At the hearing the Company contended that the employees of the Company were presently covered by a contract between the United Brotherhood of Carpenters and Joiners of America, affiliated with the Metal Trades Council of the American Federation of Labor, herein called the A. F. L., and the Eastport Marine Construction Company of Jacksonville, herein called the Marine Company.

The Marine Company was founded as a barge marine construction company in January 1942, and was chartered under the Florida laws of incorporation. A contract was signed with the United States Army for the construction of 50 wooden oil barges, and immediately thereafter a collective bargaining contract was entered into between the Marine Company and the A. F. L. for an indefinite period of time. The Marine Company completed its contract with the United States Army in September 1943 and has not done any manufacturing since that date. The Marine Company operated on a "cost-plus fee" contract with the Army, and the facilities, site, equipment, and tools used by the Marine Company were owned by the United States Army on the termination of the contract. Subsequently the facilities, site,

equipments, and tools used by the Marine Company were purchased from the United States Army in the name of the Eastport Construction Company, herein called the Construction Company, a partnership. The Construction Company commenced the manufacture of gun wiper boxes, bomb boxes, and beverage boxes about February 1944, using the same personnel as was employed by the Marine Company.

The Evergreen Millworks and Manufacturing Company, the employer involved herein, was then formed to manufacture boxes from the surplus materials of the Construction Company. Materials used by the Company are acquired from the Construction Company on the basis of an oral subcontract. The records of the two companies are kept at the Construction Company offices, but are separately maintained. The bank account and all tax reports for the two companies are also separately maintained. The Company's employees were obtained from the night-shift workers employed by the Construction Company. Personnel for the Construction Company was hired through the A. F. L. under an oral extension of the contract with the Marine Company. The A. F. L., however, has not appeared in this matter although it was given due notice of the hearing.

On a petition by the Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., requesting recognition as the representative of the Construction Company's employees we hold that the above described contract between the A. F. L. and the Marine Company did not operate as a bar to the proceedings since it is one of indefinite duration and has been in effect for a period of 1 year.¹ Without passing upon the question whether or not the contract would in any event be deemed to cover the employees of the Company, we find, accordingly, that this same contract does not bar a determination of representatives in the instant proceeding.

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 hereinafter found to be 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.

IV. THE APPROPRIATE UNIT

The parties agree, and we find, in substantial accord with their agreement that all employees of the Company engaged in maintenance

¹ See *Matter of M. Wolfson, et al., doing business as Eastport Construction Company*, 57 N. L. R. B. 1455

² The Field Examiner reported that the Union submitted 51 authorization cards, of which 11 were dated July 1944; 27 were dated June 1944; and 13 were dated May 1944; and that there were approximately 71 employees in the unit petitioned for.

and production, including leadermen³ and excluding the material clerk and checker, inspectors, expeditors, stock clerks, armed guards, clerical and office employees, foremen and 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.

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 Evergreen Millworks and Manufacturing Company, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of the 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 Section IV¹ 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 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 Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., for the purposes of collective bargaining.

³ At the hearing these men were also called subforemen; however, for purposes of identification they are herein called leadermen. The leadermen are included in the bargaining unit since their duties do not bring them within the purview of supervisory employees.