

In the Matter of SPENCER LENS COMPANY and OPTICAL WORKERS
ORGANIZING COMMITTEE, C. I. O.

Case No. 3-R-858.—Decided October 12, 1944

Mr. Edward D. Flaherty, of Buffalo, N. Y., for the Company.

Mr. Harry Jones, of Buffalo, N. Y., for the C. I. O.

Mr. Daniel B. Shortal, of Buffalo, N. Y., for Local 18 and Local 20.

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Optical Workers Organizing Committee, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Spencer Lens Company, Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on September 12, 1944. The Company, the C. I. O., Metal Polishers, Buffers, Platers and Helpers International Union, Local 18, A. F. L., herein called Local 18, and Scientific Instrument Workers of America, Local 20, Division of Metal Polishers, Buffers, Platers and Helpers International Union, A. F. L., herein called Local 20, 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 and Local 20 moved to dismiss the petition. The Trial Examiner referred the motion to the Board for determination. For reasons set forth in Section III, *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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Spencer Lens Company, a New York corporation, has its principal place of business at Buffalo, New York, where it is engaged in the manufacture of precision and optical instruments. The Company operates two plants in that city, one on Eggert Road and one on Doat Street. From January 1, 1944, to June 30, 1944, the Company used raw materials valued in excess of \$750,000, of which more than 40 percent was shipped to the Company from points outside the State of New York. During the same period the Company manufactured finished products valued in excess of \$4,500,000, of which more than 90 percent was shipped to points outside the State of New York.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Optical Workers Organizing Committee, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Metal Polishers, Buffers, Platers and Helpers International Union, Local 18, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Scientific Instrument Workers of America, Division of Metal Polishers, Buffers, Platers and Helpers International Union, Local 20, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 11, 1944, the C. I. O. filed the petition herein seeking certification as the representative of all the Company's production and maintenance employees with certain specified exclusions. On August 21, 1944, the C. I. O. mailed a letter to the Company in which it claimed to represent a majority of the Company's production and maintenance employees and requested a conference. The Company did not reply to the letter.

On April 5, 1939, a consent election among the Company's production and maintenance employees was conducted by the Regional Director for the Third Region of the National Labor Relations Board, as a result of which Local 18 was recognized by the Company as the exclu-

sive bargaining representative of all its production and maintenance employees. On December 31, 1939, the Company and Local 18 executed a collective bargaining agreement for 1 year. This contract was renewed in December 1940 and again in December 1941, each time for a further period of 1 year. In October 1942, pursuant to the provisions of the 1941 agreement, Local 18 served notice upon the Company of its election to cancel the contract. From October 1942 until February 1943 a number of conferences took place between the Company's representatives and representatives of Local 18 in an effort to reach a new agreement. The parties, however, were unable to agree on issues of wages, union security and vacation. Accordingly, the issues were certified to the Regional War Labor Board in February 1943. There followed several directive orders from the Regional War Labor Board and then an appeal to the National War Labor Board which was finally decided on September 7, 1944. On September 11, 1944, in conformity with the final determination of the National War Labor Board, the Company and Local 20 executed a collective bargaining agreement covering all the Company's production and maintenance employees, excluding metal polishing and plating employees.¹

The Company contends that an election at this time would tend to disrupt the stability of labor relations in its plant. Local 20, having submitted its dispute to governmental processes and having refrained from entering into a contract until final determination of the dispute, contends that it is now entitled to bargain under the terms of the September 11, 1944, contract. While the Company and Local 20 assert no particular decision of the Board as authority in favor of their motion to dismiss the petition, they are, in effect, arguing the *Allis Chalmers*² doctrine.

The Board there held that a newly recognized or certified representative is entitled to a reasonable opportunity to obtain for the employees the benefits of representation, as evidenced by a collective bargaining contract, and that where delay in obtaining such a contract is caused by resort to the orderly processes of governmental agencies the Board will not proceed with a new investigation and determination of representatives. We do not consider that the instant case is governed by that holding.

The present members of Local 20 formerly constituted the bulk of the membership of Local 18. Of the approximately 1,400 production

¹ From 1939 to 1943, Local 18 embraced all the Company's production and maintenance employees. During the year 1943, the metal polishing and plating employees, comprising the Company's Departments 7 and 14, decided to bargain with the Company independently. As a result, they retained the name Metal Polishers, Buffers, Platers and Helpers International Union, Local 18, and all the Company's remaining production and maintenance employees formed the Scientific Instrument Workers of America, Local 20, Division of Metal Polishers, Buffers, Platers and Helpers International Union. The present members of Local 18 are excluded from the stipulated and appropriate unit in this proceeding.

² *Matter of Allis Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

and maintenance employees in the Company's plants, all but 42, who remained in Local 18, are covered by the September 11, 1944, contract. At the hearing, counsel for Locals 20 and 18 and counsel for the Company referred to the December 1941 contract, their attempts to agree upon another contract, and the subsequent proceedings before the War Labor Board, as related incidents in their bargaining relations as though Local 20 and Local 18 had been one and the same organization. Thus, Local 20 is but a counterpart of Local 18, is consequently neither newly certified nor newly recognized, and must be considered as having had full opportunity to obtain for the employees concerned substantial collective bargaining benefits.³ Were we to conclude that a determination of representatives is barred at present, an unreasonable time will have elapsed between the date when the employees last selected their bargaining representative and the date when they will be afforded an opportunity to express a new choice. Under these circumstances, we see no reason to depart from our general rule of recognizing the existence of a question of representation when a rival claim to representation has been made prior to the execution or renewal of a collective bargaining contract.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 substantial accordance with the stipulation of the parties, that all production and maintenance employees at the Company's Buffalo, New York, plants, located on Eggert Road and on Doat Street, excluding office and clerical employees, militarized guards, technicians, metal polishers and plating employees in Departments 7 and 14, 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.

³ *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928, and *Matter of Bethlehem Supply Company*, 56 N. L. R. B. 439

⁴ The Field Examiner reported that the C. I. O. submitted 638 membership cards, that every fourth name on the Company's pay roll of August 12, 1944, was checked against the cards submitted, and that 40 percent of the names so checked were names for which the C. I. O. had submitted cards bearing apparently genuine signatures

Local 20 relies upon its contract of September 11, 1944, for the establishment of its interest in this proceeding.

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 Spencer Lens Company, Buffalo, New York, 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 Third 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 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 Optical Workers Organizing Committee, C. I. O., or by Scientific Instrument Workers of America, Local 20, Division of Metal Polishers, Buffers, Platers and Helpers International Union, A. F. L., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.