

In the Matter of ACME DIE & MACHINE COMPANY and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 6-R-1006.—Decided October 13, 1944

Mr. Jerome L. Black, for the Board.

Mr. H. A. Stewart, of Latrobe, Pa., for the Company.

Mr. Abe Bales, of Pittsburgh, Pa., for District 50.

Mr. Anthony Cavalcante, of Uniontown, Pa., for the Hod Carriers.

Mr. Robert Silagi, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Acme Die & Machine Company, Mechesneytown, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Greensburg, Pennsylvania, on September 19, 1944. The Company, District 50, and International Hod Carriers, Building and Common Laborers Union of America, Local No. 1451, herein called the Hod Carriers, 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.

During the hearing the Hod Carriers moved to dismiss the petition, alleging first, that the Board lacked jurisdiction over the Company, inasmuch as the latter did not sell its products to the public generally; second, that Harvey Hammond, subregional director for District 50, was without authority to file the petition for certification of representatives; third, that there is a validly subsisting contract between the Company and the Hod Carriers which effectively bars a present investigation into the question concerning representation;

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fourth, that the allegations in the petition are not facts; and last, that as of September 7, 1944, 1,635 employees of the Company were members in good standing of the Hod Carriers. For the reasons hereinafter given, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹ 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

Acme Die & Machine Company, a Pennsylvania corporation, maintains its principal office and place of business in Mechesneytown, Derry Township, Pennsylvania. The Company is engaged in the manufacture, assembly, and sale of explosive detonators and primers for various types of military ammunition for the use of the armed forces of the United States. During the past year the Company purchased raw materials, consisting of metal parts and explosives, having an approximate value of \$1,000,000, of which 85 percent was procured from sources outside the Commonwealth of Pennsylvania. During the same period, the Company manufactured, assembled, and sold products valued at \$6,300,000, all of which was shipped to points located outside Pennsylvania. All of the finished products were sold and delivered to various agencies of the United States Government and principally to the Navy Bureau of Ordnance.

The Company admits, and we find, contrary to the contention of the Hod Carriers, that it is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATIONS INVOLVED

District 50, affiliated with the United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

International Hod Carriers, Building and Common Laborers Union of America, Local No. 1451, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

¹ The Hod Carriers offered to prove that District 50 had obtained its membership among the Company's employees by means of misrepresentation and the circulation of false rumors. The Trial Examiner rejected the offer of proof as irrelevant to the matters in issue. We hereby affirm the Trial Examiner's ruling.

² See *Matter of New Market Steel Co., Inc.*, 54 N. L. R. B. 90, and cases cited therein. Also see *Matter of Land O'Lakes Dairy Company*, 48 N. L. R. B. 1028.

III. THE QUESTION CONCERNING REPRESENTATION

From October 13, 1941, to August 1, 1944, the Company and the Hod Carriers were parties to successive closed-shop contracts. On July 25, 1944, pending the approval of the National War Labor Board to a bonus plan, the parties executed a supplementary agreement extending the term of their last contract by 1 month to September 1, 1944. On July 31, 1944, District 50 informed the Company that it represented a majority of its employees and requested a conference to negotiate a collective bargaining agreement. Following the Company's refusal to confer, District 50 filed its petition herein.³ On August 19, the National War Labor Board approved the bonus plan. The Company presently refuses to negotiate with either union until one has been certified by the Board in an appropriate unit.

The Hod Carriers contends that a written promise by the Company, dated July 6, 1944, to initiate negotiations for a new contract within 30 days from the date of the order of the National War Labor Board settling the wage dispute, operates as a bar to a present determination of investigation. We find no merit to this contention. It is patent that a mere promise to enter into negotiations which might ultimately culminate in a contract neither prolongs nor revives a pre-existing contract. As of September 1, 1944, contractual relations between the parties ceased and no subsequent actions have been taken to establish a new contract. It is apparent, therefore, that there is no contract to bar a determination of representatives at this time. Nor are we persuaded that the pendency of the wage dispute before the National War Labor Board affects the question concerning representation.⁴

A statement of a Board agent, as supplemented by the Trial Examiner, and introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.⁵

³ The evidence adduced at the hearing convinces us that Hammond, the petitioner's representative, contrary to the contention of the Hod Carriers, had ample authority to file the petition. Moreover, the issue is not one which the Hod Carriers is privileged to raise. See *Matter of The Sora Paper Company*, 8 N. L. R. B. 657, and subsequent cases.

⁴ See *Matter of Caterpillar Tractor Co.*, 57 N. L. R. B. 1798.

⁵ The Field Examiner reported that District 50 submitted 867 application for membership cards, 822 of which bore the names of persons appearing on the Company's pay roll of August 12, 1944, and that the cards were variously dated between May and August 1944. There are approximately 1,363 employees within the appropriate unit.

The Hod Carriers submitted 1,635 authorization cards variously dated during the years 1943 and 1944. These cards were not checked against a company pay roll since the Hod Carriers relies principally upon its contract as evidence of its interest in this case.

The petition states that District 50 represents 1,350 employees. The Hod Carriers challenges the accuracy of this statement in view of the Field Examiner's report. Since there is no evidence of fraudulent intent in making the statement, nor was the intervenor aggrieved thereby, it is no ground for dismissal as the Hod Carriers urges. See *Matter of The Boardman Co.*, 55 N. L. R. B. 105.

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 parties stipulate, and we find, that all janitors, maintenance and production employees of the Company but excluding nurses, nurses' assistants, watchmen, guards, bus drivers, chemists, salaried or clerical employees, 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.⁶

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 Acme Die & Machine Company, Mechesneytown, Pennsylvania, 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 Sixth 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

⁶ This is substantially the same unit as was contained in the contract between the Company and the Hod Carriers

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 District 50, United Mine Workers of America, or by International Hod Carriers, Building and Common Laborers Union of America, Local No. 1451, A. F. of 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.