

In the Matter of PHILADELPHIA GEAR WORKS, INC. and INTERNATIONAL
ASSOCIATION OF MACHINISTS, A. F. OF L.

Case No. 4-R-1516.—Decided October 28, 1944

Mr. Francis W. Sullivan, of Philadelphia, Pa., for the Company.

Mr. Louis Wilderner, of Philadelphia, Pa., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Philadelphia Gear Works, Inc., Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on October 11, 1944. The Company and the Union appeared and participated.¹ 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

Philadelphia Gear Works, Inc., a Pennsylvania corporation, has its main office and principal place of business in Philadelphia, Pennsylvania, where it is engaged in the manufacture of gears and other

¹ Gear Works Independent Union, herein called the Independent, also served with notice, did not appear.

transmission equipment. During the calendar year 1943, the Company used over \$1,000,000 worth of raw materials, consisting mainly of iron and steel, approximately 60 percent of which was transported to the Company's plant in Philadelphia, Pennsylvania, from points outside the Commonwealth of Pennsylvania. During the same period the Company sold over \$1,000,000 worth of its products, of which approximately 62 percent was shipped to points outside the Commonwealth of Pennsylvania.

For purposes of this proceeding, the Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists affiliated with the American Federation of Labor is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union, stating that it is bound until September 30, 1945, by a contract heretofore executed by it and Gear Works Independent Union, herein called the Independent.

The contract asserted as a bar was executed on August 27, 1943, between the Company and the Independent. Thereafter, on July 17, 1944, a meeting of the Independent was called at which a motion was passed dissolving the Independent as of midnight August 23, 1944. The meeting at which dissolution was voted was attended by 162 employees, being approximately half of all the employees eligible for membership in the Independent, and the motion for dissolution was carried by a two thirds vote of that meeting. Although the Independent was a Pennsylvania corporation, it did nothing to effect its dissolution except to notify the Company and the Department of State of the Commonwealth of Pennsylvania that it was no longer functioning as a labor organization. Prior to August 23, the Independent held meetings and negotiated with the Company concerning grievances and other matters pertaining to labor relations; after that date it ceased to function except for the purpose of disposing of funds in its treasury. The Company does not argue that the Independent is still active, but contends that since it has not been legally dissolved as a corporation, and since in any event, the employees are still bound by the contract, said contract is a bar to a present determination of representatives. Whether or not the Company and the dormant corporation, the Independent, or the employees themselves are bound by the terms of the contract is immaterial to the question before this Board. Admittedly

the *de facto* existence of the Independent is doubtful. Under the circumstances, we find that the contract between the Company and the Independent does not constitute a bar to a determination of representatives herein.²

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 appropriate.³

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

In substantial accordance with the request of the Union, with which the Company takes no issue, we find that all production and maintenance employees of the Company, excluding office and clerical employees, guards and watchmen, superintendent, assistant superintendents, foremen 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,⁴ 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 payroll 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 Relation 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 Philadelphia Gear

² See *Matter of Interborough News Company*, 51 N. L. R. B. 1169; *Matter of Wilson Packing and Rubber Company*, 51 N. L. R. B. 910.

³ The Field Examiner reported that the Union submitted 148 application for membership cards, all of which bore names of persons appearing on the Company's pay roll for September 8, 1944, which contained the names of 318 persons in the appropriate unit, that 110 of the cards were undated, and that 38 were dated in July and August 1944.

⁴ The unit found appropriate herein is substantially the same as that covered by the contract between the Company and the Independent.

Works, Inc., Philadelphia, 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 Fourth 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 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 or not they desire to be represented by International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.