

In the Matter of KENTUCKY COFFEE WAREHOUSE *and* UNITED INDEPENDENT WAREHOUSE WORKERS

Case No. 15-R-1221.—Decided November 2, 1944

Messrs. Jack A. Bornemann, and J. H. Schneider, of New Orleans, La., for the Company.

Mr. Charles Minor and Rev. Jerome A. Drolet, of New Orleans, La., for the Independent.

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

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Independent Warehouse Workers, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Kentucky Coffee Warehouse, New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on October 11, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of Warehouse and Distribution Workers Union, Local 207, I. L. W. U., herein called the I. L. W. U., to intervene. The Company, the I. L. W. U., and the Independent appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the I. L. W. U. moved to dismiss the petition. The Trial Examiner reserved rulings thereon. The motions are hereby denied. 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

Kentucky Coffee Warehouse operates a warehouse at New Orleans, Louisiana, where it is engaged primarily in the handling of green coffee
59 N. L. R. B., No. 8.

imported from South America. During 1943 the Company's income exceeded \$50,000, about 80 percent of which was derived from interstate business.

The Company admits that it 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.

United Independent Warehouse Workers is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 15, 1944, the Independent requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request on the ground that it was operating under a contract with the I. L. W. U.

On October 31, 1942, the Company and the I. L. W. U. entered into an exclusive collective bargaining contract. The contract provides that it shall remain in effect until October 31, 1943, and from year to year thereafter unless notice of a desire to terminate is given by either party thereto not less than 40 days prior to any annual expiration date. Inasmuch as the Independent made its claim upon the Company prior to September 21, 1944, the date upon which the contract would have automatically renewed itself, we find that the contract does not constitute a bar to the instant proceeding.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Independent 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.

IV. THE APPROPRIATE UNIT

We find, in substantial accord with a stipulation of the parties, that all production and maintenance employees at the 111 Lafayette Street, New Orleans, Louisiana, plant of the Company, including leadsmen,

¹ The Field Examiner reported that the Independent presented an authorization petition bearing the names of 18 persons who appear on the Company's pay roll of September 7, 1944. There are approximately 25 employees in the appropriate unit. The I. L. W. U. did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

but excluding office and 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 shall direct that the question concerning representation which has arisen be resolved by means of 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 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 Kentucky Coffee Warehouse, 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 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., C. I. O., or by United Independent Warehouse Workers, for the purposes of collective bargaining, or by neither.

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

² This is substantially the same unit that is provided for in the contract between the Company and the I. L. W. U.