

In the Matter of DeSoto Hardwood Flooring Company and International Woodworkers of America, C. I. O.

Case No. 15-R-1228.—Decided November 17, 1944

Mr. George Kamenow, of Detroit, Mich., and *Armstrong, McCadden, Allen, Braden & Goodman*, by *Mr. Winstead Johnson*, of Memphis, Tenn., for the Company.

Messrs. W. A. Copeland and *Doyle Dorsey*, of Memphis, Tenn., for the I. W. A.

Mr. J. C. Barrett, of Birmingham, Ala., and *Mr. Walter T. Yount*, of Memphis, Tenn., for the United.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Woodworkers of America, C. I. O., herein called the I. W. A., alleging that a question affecting commerce had arisen concerning the representation of employees of DeSoto Hardwood Flooring Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Walter Wilbur, Trial Examiner. Said hearing was held at Memphis, Tennessee, on October 23, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of United Brotherhood of Carpenters & Joiners of America, A. F. of L., herein called the United, to intervene. The Company, the I. W. A., and the United appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ 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:

¹Although Upholsterer's International Union of North America, herein called the Upholsterer's, was served with Notice of Hearing, it did not appear.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

DeSoto Hardwood Flooring Company is a Tennessee corporation operating a plant at Memphis, Tennessee, where it is engaged in the manufacture of lumber products. The Company purchases raw materials valued in excess of \$100,000, annually, 90 percent of which is shipped to it from points outside the State of Tennessee. During the same period the Company sells products valued in excess of \$250,000, about 90 percent of which is shipped to points outside the State of Tennessee.

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

II. THE ORGANIZATIONS INVOLVED

International Woodworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Brotherhood of Carpenters & Joiners of America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 21, 1944, the I. W. A. requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request.

On August 5, 1942, the Company and the Upholsterer's entered into an exclusive collective bargaining contract. The contract provides that it shall remain in effect until October 1, 1943, and from year to year thereafter unless notice of a desire to terminate is given by either party thereto not less than 30 days prior to any annual expiration date. Inasmuch as the I. W. A. made its claim upon the Company prior to September 1, 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 I. W. A. and the United each represents a substantial number of employees in the unit hereinafter found to be appropriate.²

² The Field Examiner reported that the I. W. A. and the United presented 100 and 90 membership application cards, respectively. There are approximately 175 employees in the appropriate unit.

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 agreement with a stipulation of the parties, that all production and maintenance employees at the Memphis plant of the Company, excluding clerical employees, watchmen, engineers, firemen, salesmen, lumber inspectors, superintendents, foremen, subforemen, maintenance foremen, and any other 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 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 the limitations and additions set forth in the Direction.

Although the Upholsterer's did not appear at the hearing, we will afford it an opportunity to be placed on the ballot if it makes a request of the Regional Director therefor within 7 days from the date of this Decision, inasmuch as it was a party to the recently expired contract alluded to in Section III, *supra*.

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 DeSoto Hardwood Flooring Company, Memphis, Tennessee, 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 International Woodworkers of America, C. I. O., or by United Brotherhood of Carpenters & Joiners of America, A. F. of L., for the purposes of collective bargaining, or by neither.