

In the Matter of MARTIN DYEING & FINISHING COMPANY and TEXTILE
WORKERS UNION OF AMERICA, C. I. O.

Case No. 4-R-1523.—Decided November 20, 1944

Mr. A. R. McAllister, Jr., of Bridgeton, N. J., for the Company.

Mr. Sol Stetin, of Newark, N. J., and *Mr. Frank Kiss*, of Camden, N. J., for the C. I. O.

Mr. Albert K. Plone, of Camden, N. J., for the A. F. L.

Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Textile Workers Union of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Martin Dyeing & Finishing Company, Bridgeton, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene Matthew Purver, Trial Examiner. Said hearing was held at Bridgeton, New Jersey, on October 7, 1944. The Company, the C. I. O., and United Textile Workers of America, A. F. L., herein called the A. F. L., 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 the A. F. L. moved to dismiss the petition on the grounds that (1) an existing contract between the Company and the A. F. L. is a bar to the instant proceeding, and (2) the petition is untimely. The motion was referred to the Board by the Trial Examiner. For reasons stated 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. The A. F. L.'s request for oral argument is denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Martin Dyeing & Finishing Company, a New Jersey corporation, is engaged at Bridgeton, New Jersey, in the dyeing and finishing of textile material for the account of others. During the calendar year 1943, the Company dyed and finished textile material valued in excess of \$500,000, of which approximately 95 percent was shipped to points outside the State of New Jersey. During the same period, the Company purchased goods valued in excess of \$500,000, of which approximately 75 percent was shipped from points outside the State of New Jersey.

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

II. THE ORGANIZATIONS INVOLVED

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 20, 1943, the C. I. O. advised the Company that it represented a majority of the Company's employees and wished to be recognized as the exclusive bargaining representative of such employees. The Company refused to recognize the C. I. O. until it was certified by the Board in an appropriate unit. However, on July 21, 1943, the Company and the A. F. L. entered into a collective bargaining agreement, effective as of August 1, 1943, which provided, in part, as follows:

The terms and conditions of this agreement (with the exception of wages) shall continue in effect for the duration of the present war and for three months after the cessation of hostilities.

On October 22, 1943, upon a petition filed by the C. I. O., and after a hearing in which all parties to the present proceeding participated, the Board issued a Decision and Direction of Election¹ finding the contract between the Company and the A. F. L. not to be a bar to a determination of representatives, since the claim of the C. I. O. had been made in timely fashion. On November 24, 1943, the Board, after

¹ *Matter of Martin Dyeing & Finishing Company*, 52 N. L. R. B. 1513

the directed election, certified the A. F. L. as the exclusive bargaining representative of certain of the Company's employees. On July 28, 1944, the C. I. O. advised the Company that it represented a majority of certain of the Company's employees and wished to be recognized as the exclusive bargaining representative of such employees. On July 31, 1944, the Company replied that it could not recognize the C. I. O. because it was currently operating under the collective bargaining agreement of July 21, 1943.

As a general rule, we do not hold a new election less than 1 year from a prior certification. Here, however, the certification will be a year old by the time an election can be conducted. We, therefore, find that the certification of November 24, 1943, is not a bar to this proceeding.² Since the contract of July 21, 1943, has been in existence for a period of more than a year and is for an indefinite term, it is clear that it cannot bar a present determination of representatives.³

A statement of a Field Examiner for the Board, 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 accordance with the stipulation of the parties, that all the Company's production and maintenance employees, excluding the office force, guards and watchmen, foremen, supervisors, 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, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁵

² *Matter of DeFrance Screw Machine Products Company*, 58 N. L. R. B. 510.

³ *Matter of The Trailer Company of America*, 51 N. L. R. B. 1106.

⁴ The Field Examiner reported that the C. I. O. submitted 217 authorization cards, of which 168 were dated between July and September 1944, and 59 were undated. He also reported that there were 342 persons in the alleged appropriate unit. The A. F. L. relies on its contract with the Company as evidence of its interest in this proceeding.

At the hearing, the A. F. L. objected to the admission into evidence of the statement of the Field Examiner because no comparison was made of the names appearing on the cards with the names of the employees listed on a pay roll of the Company. Inasmuch as the evaluation of authorization cards is an administrative matter, wholly within the discretion of the Board, and not subject to either direct or collateral attack by parties to a representation proceeding, the objection is hereby overruled. See *Matter of American Finishing Company*, 54 N. L. R. B. 996.

⁵ This unit is substantially the same as that found to be appropriate by the Board in *Matter of Martin Dyeing & Finishing Company*, *supra*.

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 Martin Dyeing & Finishing Company, Bridgeton, New Jersey, 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 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 Textile Workers Union of America, C. I. O., or by United Textile Workers of America, A. F. L., 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.