

IN the Matter of LASTIK PRODUCTS COMPANY, INC. and UNITED STONE
AND ALLIED PRODUCTS WORKERS OF AMERICA, C. I. O.

Case No. 6-R-1029.—Decided November 28, 1944

Messrs. D. S. Steinfirsh and J. deS. Freund, of Pittsburgh, Pa., for the Company.

Messrs. Philip M. Curran and Dominick Spasbo, of Pittsburgh, Pa., and Mr. Lewis R. Lowry, of Barre, Vt., for the C. I. O.

Mr. Peter Ferrara, of Indiana, Pa., and Mr. Ralph L. Green, of New Castle, Pa., for the U. M. W.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Stone and Allied Products Workers 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 Lastik Products Company, Inc., Wampum, Pennsylvania, 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 Pittsburgh, Pennsylvania, on November 7, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of United Construction Workers, affiliated with United Mine Workers of America, herein called the U. M. W., to intervene. The Company, the C. I. O., and the U. M. W. appeared, participated, and 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 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

Lastik Products Company, Inc., is a Pennsylvania corporation operating a plant at Wampum, Pennsylvania, where it is engaged in the
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manufacture of concrete roof slabs. 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 Pennsylvania. 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 Pennsylvania.

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

II. THE ORGANIZATIONS INVOLVED

United Stone and Allied Products Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On September 30, 1943, the U. M. W. and the Company entered into a written exclusive collective bargaining contract, effective until September 30, 1944, with provision for automatic renewal from year to year thereafter in the absence of written notice to terminate given by either party not less than 30 days prior to any annual expiration date.¹ The contract further provided that the parties would meet within 15 days from the time of such termination notice. On August 31, 1944, the Company received a letter from the local of the U. M. W. stating, "Wishing to inform you that special meeting was held Tuesday evening, August 29, and have decided to break contract. We, the Local Union, desire a meeting with company officials within 15 days." On September 7, 1944, the C. I. O. notified the Company that it claimed to represent a majority of the employees involved herein and requested a collective bargaining conference. The Company refused to grant such recognition, stating that it was precluded from doing so by its existing contract with the U. M. W. The U. M. W. contends that its contract is a bar to a determination of representatives in this proceeding.

Upon the basis of the facts above set forth, the U. M. W. contends that inasmuch as formal notification of the representation claims of the C. I. O. was not given the Company until after the operative date of the contract's automatic renewal provision, the contract constitutes a bar. With this contention we cannot agree. Only in the

¹ This contract was amended in the Spring of 1944 with respect to certain wage and vacation provisions therein. The amendment, however, did not alter the term of the contract or its provision for automatic renewal.

absence of other factors sufficient to place the parties upon notice that a question concerning representation exists, has the Board held untimely the representation claim of a labor organization made subsequent to the effective date of the automatic renewal provision of a contract.² Where as here, the employees themselves, by timely action, make plain their dissatisfaction with the existing agreement prior to its automatic renewal date and request a conference pursuant to the provisions of that contract, a present determination of representatives is not precluded merely because the petitioner fails to notify the Company of its claim prior to the automatic renewal of the existing contract. As we have recently pointed out, it is not only the contracting union that enjoys the prerogative of terminating a collective bargaining contract; the employees themselves can achieve the same result by evincing an intent to choose a new bargaining representative.³ Had a claim to majority representation been made by the C. I. O. on August 31, 1944, such a claim would have been sufficient to render the renewal clause of the contract ineffective as a bar. We perceive no reason for reaching a different result where the employees on their own behalf place the employer on notice, prior to the renewal date, of their desire to terminate the then existing agreement. Accordingly, we find that the contract does not constitute a bar to a present determination of representatives.

A statement of a Field Examiner of 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 to be 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 substantial agreement with a stipulation of the parties, that all production and maintenance employees at the Cement Tile Division of the Company at Wampum, Pennsylvania, excluding clerical and office 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 See *Matter of Mill B, Inc.*, 40 N. L. R. B. 346.

³ See *Matter of The Van Iderstine Company*, 55 N. L. R. B. 1339.

⁴ The Field Examiner reported that the C. I. O. presented 41 membership application cards bearing the names of persons who appear on the Company's pay roll for the period ending July 31, 1944. There are approximately 49 employees in the appropriate unit. The U. M. W. did not present any evidence of representation, but relies upon its contract as evidence of its interest in the instant proceeding.

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.

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 Lastik Products Company, Inc., Wampum, 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 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 United Stone and Allied Products Workers of America, C. I. O., or by United Construction Workers, affiliated with United Mine Workers of America, for the purposes of collective bargaining, or by neither.