

In the Matter of AMERICAN CHAIN & CABLE COMPANY, INC. and FEDERAL LABOR UNION 23732, AMERICAN FEDERATION OF LABOR

Case No. 4-R-1525.—Decided November 29, 1944

Fisher, Ports, and May, by Mr. Ralph F. Fisher, of York, Pa., for the Company.

Messrs. Edward Davis and Thomas Mallon, of Philadelphia, Pa., and *Messrs. John Carl Foster, Jr., and Russell S. Stine*, of York, Pa., for the A. F. of L.

Mr. Harry Boyer, of Reading, Pa., for the C. I. O.

Mr. Julius Kirle, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Federal Labor Union 23732, American Federation of Labor, herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of American Chain & Cable Company, Inc., York, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. Said hearing was held at York, Pennsylvania, on October 24 and 25, 1944. The Company, the A. F. of L., and the United Steelworkers of America, herein called the C. I. O.,¹ 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 C. I. O. moved to dismiss the petition on the ground that its contract with the Company is a bar to the instant proceeding. Ruling on the motion was reserved for the Board. For reasons stated in Section III, *infra*, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from

¹ The C. I. O. appeared in behalf of its Local 1852. Prior to October 21, 1943, an International representative was designated by the C. I. O. to supervise the affairs of Local 1852, which presently represents the employees of the E. W. Division involved herein

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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

American Chain & Cable Company, Inc., a New York corporation, is engaged in the manufacture of chains, cranes, garage equipment, and malleable castings. It operates 20 plants located in various parts of the United States, Canada, and England, including 3 plants at York, Pennsylvania. We are concerned here with the E. W. Division at York, Pennsylvania. During the past year, the Company's E. W. Division used raw materials valued in excess of \$500,000, 10 percent of which was shipped to it from points outside the Commonwealth of Pennsylvania. During the same period, the E. W. Division produced finished products valued in excess of \$500,000, 95 percent of which was shipped to points outside the Commonwealth.

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

II. THE ORGANIZATIONS INVOLVED

Federal Labor Union 23732, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

III. THE QUESTION CONCERNING REPRESENTATION

On October 21, 1943, the Company and the C. I. O. executed a collective bargaining contract covering the production and maintenance employees of the E. W. Division.² The contract contained the following clause:

The 1943 agreement shall continue until changed or terminated as follows: (a) either party may subsequent to July 1, 1944, at any time and from time to time give ten (10) days written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change of the 1943 agreement, which conference

² The contract was signed by the officers and representatives of Local 1852 and by the International representatives of the C. I. O.

shall be at the office of the Company in York, Pennsylvania, unless otherwise mutually agreed, and (b) if because of failure to agree, the 1943 agreement is not changed by written agreement entered into by the Company and the Union within 20 days from the giving of said notice, then, unless extended by mutual agreement between the parties, the 1943 agreement and all the provisions thereof shall terminate upon the expiration of 20 days from the giving of said notice.³

On July 3, 1944, the C. I. O., by letter, notified the Company of its desire to negotiate a new contract for the E. W. Division, negotiations to commence on July 14, 1944. On July 15, 1944, the day after negotiations were to commence, the Company wrote a letter to the C. I. O. confirming a telephone conversation on that date and agreeing that "negotiations between United Steelworkers of America, Local Union No. 1852 and our Company be postponed and the present agreement be extended pending the issuance of a Directive Order of the National War Labor Board." On July 13 and 20, 1944, the C. I. O. filed petitions with the N. W. L. B. requesting an interim directive order for the extension of existing collective bargaining agreements, including those of the Company. On August 9, 1944, the A. F. of L. requested recognition and on August 18, 1944, filed its petition. On September 5, 1944, the N. W. L. B. issued an interim directive order directing the continuance of the terms of the 1943 contract between the Company and Local 1852 until the execution of a new contract.

The Company contends that its contract with Local 1852 and the subsequent proceeding before the N. W. L. B. constitute a bar to the instant proceeding. We do not agree with these contentions. The Board has repeatedly held that mere submission of a dispute to the N. W. L. B. for adjudication, or the pendency of a case before that Agency, does not require the Board to delay or refuse to proceed to an immediate determination of a collective bargaining representative where there exists a valid question concerning representation.⁴ In view of the C. I. O.'s contractual relations with the Company since 1938, it is clear that it has obtained for the employees substantial benefits of representation throughout that period. Thus, the C. I. O. is not in the position of a newly certified representative which is entitled to a reasonable opportunity to act as the exclusive representative and secure for the employees the benefits of representation.⁵ Moreover, on July 3, 1944, pursuant to the terms of the 1943 contract, the parties evinced an intention to terminate such contract and to enter into negotiations for a new one; thus, on August 9, 1944, when the A. F. of L.

³ Since the notice was given on July 3, 1944, the termination date would be July 23, 1944.

⁴ See *Matter of Caterpillar Tractor Company*, 57 N. L. R. B. 1798.

⁵ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

requested recognition and on August 18, 1944, when it filed its petition, both of which events occurred prior to the issuance of the interim order by the N. W. L. B., a question concerning representation arose. Even if we are to assume that the letter of July 15, 1944, from the Company to the C. I. O., constituted a sufficient written agreement to continue the 1943 contract in effect pending the interim order of the N. W. L. B., it still would not serve as a bar to the instant proceeding since it would be an extension of the 1943 contract for an indefinite period.⁶ In view of these circumstances, we find that neither the 1943 contract nor the subsequent order of the N. W. L. B. constitutes a bar to the instant proceeding.⁷

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found appropriate.⁸

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

The A. F. of L. seeks a unit of all production and maintenance employees of the Company's E. W. Division, excluding executives, foremen, assistant foremen, salaried employees, and plant-protection employees. The Company, on the other hand, contends that the appropriate unit should include the production and maintenance employees in all of the Company's three plants comprising the York Division. The C. I. O. takes no position with respect to the appropriate unit.

During the period from 1938 to 1943, the E. W. Division, the W. M. Plant, and the foundry, comprising the York Division, were bargained for as a multiple-plant unit by Local 1852. However, in 1943, the employees of the W. M. Plant and the foundry broke away from the employees of the E. W. Division and formed a bargaining unit of their own, separate and distinct from the employees of the E. W. Division, and were granted a charter as Local 3066. The employees of the E. W. Division, thereupon, withdrew from any further negotiations involving the employees of the other two plants. Subsequently, separate contracts were executed in behalf of Local 1852 covering employees of the E. W. Division, and in behalf of Local 3066 covering the employees of the W. M. Plant and the foundry, as distinct units.

Although the foregoing collective bargaining history shows that the employees of the E. W. Division can properly function as part of

⁶ See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035; *Matter of Rheem Manufacturing Company*, 56 N. L. R. B. 159.

⁷ See *Matter of Caterpillar Tractor Company*, footnote 4, *supra*.

⁸ The Field Examiner reported that the A. F. of L. submitted 686 cards, all dated in August 1944; and that there are 1,204 employees in the claimed appropriate unit.

a multiple-plant unit, the more recent breaking away by the employees of the W. M. Plant and the foundry from the E. W. Division indicates a distinct cleavage between the two groups. The establishment of separate bargaining units as a result of this cleavage is clearly shown by the subsequent withdrawal of the E. W. Division from negotiations involving the W. M. Plant and the foundry and the execution of separate contracts by the Company and the respective C. I. O. locals. Neither the C. I. O. nor its Locals 1852 and 3066 have expressed any desire to change the bargaining units thus established. Since the alleged close integration between the operations of the E. W. Division and the two other operating plants of the Company apparently has not impeded the functioning of the E. W. Division as a separate unit, we see no reason to find, under the circumstances here present, that only a single multiple-plant unit is appropriate.

We find that all production and maintenance employees of the Company's E. W. Division, but excluding executives, foremen, assistant foremen, salaried employees, plant-protection employees, 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 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 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 American Chain & Cable Company, Inc., York, 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 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 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 Federal Labor Union 23732, A. F. of L., or by United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.⁹

⁹The A. F. of L. and the C. I. O. requested that they be designated on the ballot as set forth above. The request is hereby granted.