

In the Matter of OLIVE & MYERS MANUFACTURING COMPANY and
CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 16-R-1047.—Decided November 29, 1944

Mr. Arthur J. Riggs, of Dallas, Tex., for the Company.
Mr. Lindsey P. Walden, of Ft. Worth, Tex., and *Mr. A. R. Hardesty*,
of Dallas, Tex., for the C. I. O.
Mr. Reinhold Wilke, of Houston, Tex., for the A. F. L.
Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION
STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Olive & Myers Manufacturing Company, Dallas, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Lewis Moore, Trial Examiner. Said hearing was held at Dallas, Texas, on October 26, 1944. The Company, the C. I. O., Upholsterers' International Union of North America, A. F. L., herein called the International, and its local, Upholsterers' and Bedding Workers' Local Union No. 251, herein called Local 251, both collectively called the A. F. L., appeared and participated.¹ All parties 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 an opportunity to file briefs with the Board.

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

¹ Reinhold Wilke stated at the hearing that he appeared on behalf of the International, but the written motion to intervene which he submitted is subscribed by "Upholsterers' International Union of North America, Local 251."

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Olive & Myers Manufacturing Company, a Texas corporation, has its principal place of business at Dallas, Texas, where it is engaged in the manufacture and distribution of office furniture. For its jobbing operations, the Company obtains 95 percent of its raw materials from sources outside the State of Texas, and for its manufacturing operations, it obtains 25 percent of its raw materials from sources outside that State. During the 12-month period preceding the date of the hearing, the raw materials it purchased from outside the State were valued in excess of \$75,000, and during that same period its total volume of business was in excess of \$500,000. Practically all of its products are sold within the State of Texas.

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

II. THE ORGANIZATIONS INVOLVED

Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.

Upholsterers' International Union of North America and its local, Upholsterers' and Bedding Workers' Local Union No. 251, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 8, 1944, the C. I. O. requested recognition as the exclusive bargaining representative of the Company's production and maintenance employees. The Company, because of a contract made with the A. F. L. on June 16, 1944, refused to recognize the C. I. O. While the Company does not urge the contract as a bar, the A. F. L. asserts that it precludes a present determination of representatives.

For several years the Company has had annual collective bargaining contracts with Local 251 covering its production and maintenance employees. The International also has been a party to these contracts. The last such contract was executed on June 16, 1944, and was to remain in effect from June 15, 1944, to June 15, 1945.

The C. I. O. seeks to represent substantially the same employees covered by the 1944 contract between the Company and the A. F. L., a unit apparently including 135 employees. G. E. Walden, former president of Local 251, testified at the hearing that, on June 16, 1944, its members were ". . . all over the plant, anywhere from 3 to 5 months behind in their dues," and that "they are automatically discharged [from Local

251] when they get that far behind in their dues." He added that, in June, Local 251 had no more than 30 members in good standing. On September 2, 1944, 40 members of Local 251 held a meeting at which they unanimously voted to dissolve Local 251, to disaffiliate from the American Federation of Labor, and to apply for affiliation with the C. I. O. Walden also stated that, at the time of the hearing, Local 251 had "just dwindled out," that there no longer were any officers or representatives, that no one was abiding by the 1944 contract, and that no member of Local 251 was then employed by the Company. None of the foregoing testimony was contradicted, although the International's representative appeared also on behalf of Local 251.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the C. I. O. submitted 100 cards, all dated September 1944. In addition, the C. I. O. submitted to the Trial Examiner at the hearing 17 authorization cards.² We find that the Field Examiner's report and the cards submitted at the hearing establish that the C. I. O. represents a substantial number of the employees in the unit hereinafter found appropriate.³

In many cases we have determined that an agreement, otherwise valid as a bar, does not preclude a determination of representatives where substantially the entire membership of the contracting union in the affected bargaining unit has shifted to another organization.⁴ As stated above, at least 117 of approximately 135 employees in the unit sought have indicated their affiliation with the C. I. O., and not a single member of Local 251 is now in the Company's employ. Accordingly, we find that the contract of June 16, 1944, does not constitute a bar to a present determination of representatives.

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 parties are in agreement concerning the composition of an appropriate unit at the Company's Dallas, Texas, plant, except with respect to two employees, A. L. Howard and B. D. McGowan. The Company urges their exclusion, the A. F. L. takes no position concerning them, and the C. I. O. contends that their inclusion or exclusion should be determined by their work classification.

Howard and McGowan are specifically excluded from the 1944 contract between the Company and the A. F. L., with no reason for

² G E Walden also testified that 125 of the Company's employees are now members of the C I O

³ The A F L relies upon its contract to establish its interest in this proceeding.

⁴ *Matter of Gelatin Products*, 49 N L R B 173

their exclusion stated therein. The record indicates that Howard is a production worker and McGowan is a maintenance employee. There is some mention in the record to the effect that their exclusion is desired by the Company for personal reasons but there is no detailed factual statement upon their exclusion is claimed. Under the circumstances, we shall not exclude them from the unit.

We find, in substantial accordance with the stipulation of the parties, and pursuant to our foregoing determination, that all production and maintenance employees at the Company's Dallas, Texas, plant, including clean-up men in any department, but excluding janitors, guards, watchmen caretakers, timekeepers, all office employees, the warehouse receiving clerk, the warehouse shipping clerk, the chauffeur of the courtesy car, draftsmen, designers, assistant foremen, foremen, assistant superintendents, superintendents, officers and directors of the Company, 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.⁵

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.⁶

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 Regulations¹—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Olive & Myers Manufacturing Company, Dallas, Texas, 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 Sixteenth 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

⁵ This is substantially the same unit covered by the 1944 contract between the Company and the A F L

⁶ We shall place the International upon the ballot.

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 the Congress of Industrial Organizations, or by Upholsterers' International Union of North America, A. F. L., for the purposes of collective bargaining, or by neither.