

In, the Matter of CARTER MANUFACTURING COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, MEMPHIS LODGE NO. 14, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

*Case No. 15-R-1232.—Decided December 9, 1944*

*Messrs. Newell N. Fowler and C. A. Davis, of Memphis, Tenn., for the Company.*

*Mr. L. M. Fagan, of Memphis, Tenn., for the Union.*

*Mr. Erwin A. Peterson, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, Memphis Lodge No. 14, affiliated with the A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Carter Manufacturing 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 26 and 27, 1944. The Company and the Union 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. 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 Company and the Union requested oral argument. The request is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Carter Manufacturing Company is a copartnership consisting of N. A. Carter, Jr., Mrs. N. A. Carter, Mrs. Mackie Carter Evans, and

59 N L R. B., No. 162.

N. A. Carter, Sr. Its principal office and place of business is in Memphis, Tennessee, where it is engaged in the manufacturing of commercial truck trailers. During the year 1943, the Company purchased raw materials for use at its plant which were valued at approximately \$500,000, of which more than 50 percent originated from points outside the State of Tennessee. During the same period, the Company manufactured finished products valued at approximately \$1,000,000, of which approximately 90 percent was shipped to points outside the State of Tennessee. Approximately 80 percent of the dollar value of the finished products of the Company was manufactured pursuant to contracts having a direct relationship to the national war effort.

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

## II. THE ORGANIZATION INVOLVED

International Association of Machinists, Memphis Lodge No. 14, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On August 21, 1944, the Union requested recognition from the Company as the exclusive bargaining representative of its production and maintenance employees, and requested a meeting to discuss negotiations for a contract. By letter dated August 24, 1944, the Company's representative asked for approximately 10 days' time before meeting with the union representative. On September 14, 1944, in a conference with the union representative, the Company's representative requested additional time before deciding whether or not to recognize the Union as exclusive bargaining representative. Thereupon, the Union filed the petition in this matter on September 16, 1944. At the hearing, the Company contended that the Union did not represent a substantial number of employees in the unit it claims to be appropriate for collective bargaining. In view of the Union's showing of interest, this contention is without merit.

The Company questions the competency of the Union to represent its employees on the ground that the Union allegedly refuses to admit Negroes to membership. A substantial proportion of the Company's employees in the appropriate unit are Negroes. The Company further requests advice as to whether or not it can bargain collectively with the Union, providing it is duly certified by the Board following an election, without violating the President's Executive Order No.

9346, amending Executive Order No. 8802.<sup>1</sup> The Board conceives it to be the duty of a duly certified representative to provide equal representation to all employees in the unit for which it is the statutory bargaining agent, irrespective of race, color, creed, or national origin.<sup>2</sup> In the instant case, however, the record fails to disclose that the Union has refused to admit employees to membership because of their race, color, creed, or national origin; and officials of the Union asserted at the hearing that the Union can and will "represent" the Negroes in the Company's employ if it is certified as the result of this proceeding. In the absence of proof that the Union discriminatorily denies membership to employees in the appropriate unit because of their race, we see no reason to dismiss its petition. However, if it is later shown, by an appropriate motion, that the Union has denied equal representation to any such employee because of his race, color, creed, or national origin, we will consider rescinding any certification which may be issued herein.<sup>3</sup>

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

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

Substantially in accordance with an agreement of the parties at the hearing, we find that the following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: all production and maintenance employees at the Memphis, Tennessee, plant of the Company, excluding all executive, professional, and clerical employees, watchmen, foremen, and all other supervisory employees with authority to hire, promote, discharge,

<sup>1</sup> This Order provides in substance:

There shall be no discrimination in the employment of any persons in war industries or in Government by reason of race, creed, color, or national origin and . . . It is the duty of all employers . . . and all labor organizations in furtherance of this policy and of this Order to eliminate discrimination in regard to hire, tenure, terms, or conditions of employment or union membership because of race, creed, color, or national origin.

<sup>2</sup> In the *Matter of Bethlehem-Alameda Shipyard, Inc.*, 53 N. L. R. B. 999, the Board stated:

We entertain grave doubt whether a union which discriminatorily denies membership to employees on the basis of race may nevertheless bargain as the exclusive representative in an appropriate unit composed in part of members of the excluded race.

<sup>3</sup> See Orders issued May 27, 1944, and November 18, 1944, in *Matter of Larus & Brother Co., Inc.*, Cases Nos. 5-R-1413, 5-R-1437.

<sup>4</sup> The Field Examiner reported that the Union submitted 48 authorization cards, all of which bore apparently genuine original signatures, 38 of which were dated in June 1944, and 10 in August 1944. The Company's pay roll ending October 24, 1944, contained 74 names.

discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

#### 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 Carter Manufacturing 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 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 or not they desire to be represented by International Association of Machinists, Memphis Lodge No. 14, A. F. of L., for the purposes of collective bargaining.