

In the Matter of JACKSON BOX COMPANY and BOX MAKERS INDEPENDENT UNION, No. 1

Case No. 18-R-1093.—Decided December 9, 1944

Mr. Gilbert H. Berndt, of Black River Falls, Wis., for the Company.

Mr. Charles F. Dell, of Black River Falls, Wis., for the Independent.

Mr. Walter Jensen, of Madison, Wis., for the Carpenters.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Box Makers Independent Union, No. 1, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Jackson Box Company, Black River Falls, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Black River Falls, Wisconsin, on October 10, 1944. The Company, the Independent, and United Brotherhood of Carpenters and Joiners, Local Union No. 3164, herein called the Carpenters,¹ 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 Carpenters moved at the hearing for a dismissal of the petition. This motion was referred by the Trial Examiner to the Board. 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.

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

¹ The record indicates that United Brotherhood of Carpenters and Joiners, Local Union No. 1264, which had previously been designated as the collective bargaining representative of the employees involved herein, is the same organization as the Carpenters herein.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Jackson Box Company, a Wisconsin corporation maintaining a plant and offices at Black River Falls, Wisconsin, is engaged in the manufacture and sale of boxes and crates. During the calendar year 1943, the Company purchased approximately 30 percent of the raw material used at its Black River Falls operations from points outside the State of Wisconsin. These purchases were valued at approximately \$165,000. During the same period, about 60 percent of the total sales of the Company was made to points outside the State of Wisconsin. Such sales were valued at approximately \$420,000.

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

II. THE ORGANIZATIONS INVOLVED

Box Makers Independent Union, Local No. 1, is an affiliated labor organization, admitting to membership employees of the Company.

United Brotherhood of Carpenters and Joiners, Local Union No. 3164, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Independent as the exclusive bargaining representative of certain of its employees until the Independent has been certified by the Board in an appropriate unit.

In 1940, subsequent to an election held under the auspices of the Wisconsin Employment Relations Board, herein called the Wisconsin Board, the Company recognized the Independent as the collective bargaining representative of its factory and sawmill employees, herein referred to collectively as the plant employees.² On July 13, 1942, after a consent election held under Board auspices³ among "all production and maintenance employees of the Company,"⁴ the Carpenters was designated as their collective bargaining representative.

Since its designation, the Carpenters unsuccessfully has endeavored to obtain a written collective bargaining agreement with the Company. It held several meetings with the Company in 1942. In January 1943, a conciliator was called in to adjust the differences between the parties, but no contract resulted from the conferences which ensued. In March,

² Although the unit in which the election was conducted was not set forth, it is clear from the record that only the plant employees participated in the election.

³ Case No. 12-R-502.

⁴ Here, too, the record is clear that only the plant employees participated in the election.

certain differences between the parties were submitted to a panel of the National War Labor Board, and, on July 26, a directive was issued by this body, effective as of August 9.⁵ The Carpenters, subsequent to the issuance of the directive, renewed its attempts to obtain a written agreement from the Company, and several meetings were held between the parties during the remainder of the year 1943. These attempts continued through July 24, 1944, but no written collective bargaining agreement was consummated. Prior to that date, the Company had indicated its belief that the Carpenters no longer represented a majority of its employees, and that the Independent would soon request a redetermination with respect to the bargaining agent. However, on July 24, pursuant to the suggestion of another conciliator who had been called in, the Company executed an agreement with the Carpenters providing in effect, that if the Independent did not file a representation petition with either the Board or the Wisconsin Board by August 9, the Company would "proceed to negotiate" with the Carpenters. On August 10, the parties reached a tentative understanding, although the Company indicated at that time that any agreement would be of no use since the Company had been informed that the Independent was in the process of filing a representation petition.⁶ At this meeting, the Carpenters sought to include the woods crew within the collective bargaining unit, but the Company refused to agree. On August 10, the Carpenters submitted another proposal to the Company, and on August 23, the Company submitted counterproposals to the Carpenters. The Carpenters did not reply but, instead, again resorted to the National War Labor Board. On October 4, the "refusal of the Company to renegotiate contract⁷ with Union" was certified to that Board, and is still pending before it.⁸

As previously indicated, the Carpenters moved at the hearing for the dismissal of the instant petition. This motion is based upon the ground that a dispute between the parties is currently before another governmental agency. This fact, alone, is insufficient to warrant a dismissal of the proceeding.⁹ Nor can it be said that the doctrine of the *Allis-Chalmers*¹⁰ case is applicable to the facts in this proceeding. That case stands solely for the principle that a newly recognized or certified representative is entitled to a reasonable opportunity to obtain the benefits of representation, as evidenced by a collective bar-

⁵ Case No. 111-491-D.

⁶ The petition in the instant case was filed on August 17, 1944.

⁷ The Carpenters adduced evidence to the effect that, failing to obtain a written contract from the Company, it considered the directive of July 27, 1943, as the original "contract."

⁸ Case No. 111-11272-D.

⁹ *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928, and cases cited therein.

¹⁰ *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

gaining contract, and that where delay in obtaining such contract is caused by resort to the orderly processes of governmental agencies, the Board will not proceed with a new investigation and determination of representatives. In the instant case, the Carpenters is not a newly recognized or newly certified representative. Furthermore, it had already had recourse to the processes of another governmental agency, and had obtained therefrom a determination with respect to all issues submitted to that agency. The failure of the Carpenters to obtain a written collective bargaining agreement from the Company can in no wise be traced to delay caused by proceedings before another governmental agency. On the contrary, it would appear from the record that the Carpenters claims, in substance, that its failure to obtain a written contract was due, rather, to the Company's lack of good faith in negotiating with it. However, the Carpenters did not file a charge alleging that the Company refused to bargain within the meaning of Section 8(5) of the Act, and consequently the matter is not properly before us in the instant representation proceeding.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Independent and the Carpenters each represents a substantial number of employees in the unit hereinafter found appropriate.¹¹

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 Independent seeks a unit comprised of all plant employees of the Company, excluding clerical and supervisory employees, a unit which the Company agrees is proper. The Carpenters contends that all employees of the Company, including employees of the woods gang, but excluding clerical and supervisory employees, is the appropriate unit, thus raising as an issue the inclusion of the employees in the woods gang.

The Board has frequently differentiated between plant employees and logging crews, and has refused in some instances, despite contentions to the contrary, to find that the two groups constitute a single appropriate unit.¹² It is evident from the record that the woods gang was never historically part of the bargaining unit. The Independent, during its period as representative, never bargained for the employees

¹¹ The Field Examiner reported that the Independent submitted 50 designations and that there are 90 employees in the unit it alleges to be appropriate.

He further reported that the Carpenters submitted 56 designations and that the unit which it contends to be appropriate contains 116 employees.

¹² See, e. g., *Matter of Union Lumber Company*, 53 N. L. R. B. 567.

in this group, and the Carpenters has not attempted to do so until comparatively recently.¹³ These employees did not participate either in the election of 1940 or that of 1942, nor were they included among the employees affected by the directive of July 7, 1943. Under these circumstances, particularly the history of collective bargaining with the Company, we shall exclude them.¹⁴

A dispute exists between the Carpenters on the one hand, and the Independent and the Company on the other, with respect to the alleged supervisory status of certain millwrights employed by the Company. The Carpenters contends that Carl Leitzke, Albert Montay, and Richard Dalby are supervisory employees and should be excluded, whereas the Company and the Independent contend to the contrary.

Carl Leitzke is an hourly paid worker who, in addition to his duties as a millwright, is in charge of the wire bound room. In his latter capacity, he directs the work of approximately 7 to 14 employees and has authority to make effective recommendations with respect to their status. We find Leitzke to be a supervisory employee and we shall exclude him.

Albert Montay at times directs the work of approximately three other millwrights. However, he receives the same wages as they, and no evidence was adduced which indicates that he possesses authority to make effective recommendations with respect to their status. We find Montay to be a non-supervisory employee, and we shall include him.

Richard Dalby is assigned to the maintenance and repair of trucks. He has authority to prevent the use of the trucks when, in his opinion, they are not in proper condition; however, other than that, he has none of the indicia of a supervisory employee.¹⁵ We shall include Dalby.

We find that all factory and sawmill employees of the Company,¹⁶ but excluding clerical employees¹⁷ 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,¹⁸ constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

¹³ There is evidence that the Carpenters attempted on two occasions to prosecute grievances on behalf of employees in the woods gang. However, such evidence alone is insufficient to warrant a finding that the woods gang has been included within the collective bargaining unit.

¹⁴ Our exclusion, however, is without prejudice to the entertainment of a petition alleging that these employees comprise a separate appropriate unit.

¹⁵ The record discloses that he occasionally directs the work of employees assigned to loading kilns, but it fails to indicate that he possesses authority to make effective recommendations regarding the status of these employees.

¹⁶ Montay and Dalby are deemed included.

¹⁷ The assistant timekeeper and the stenographer are included within this category.

¹⁸ Leitzke and the salaried foremen are included within this category.

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.¹⁹

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 Jackson Box Company, Black River Falls, Wisconsin, 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 Eighteenth 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 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 Box Makers Independent Union No. 1, or by United Brotherhood of Carpenters & Joiners of America, Local 3164, A. F. of L., for the purposes of collective bargaining, or by neither.

¹⁹ The Independent desires to be designated upon the ballot as "Box Makers Independent Union No. 1" and the Carpenters requests that it be designated thereon as "United Brotherhood of Carpenters & Joiners of America, Local 1264, A. F. of L." These requests are hereby granted.