In the Matter of THE CONTAINER COMPANY, DIVISION OF CONTINENTAL CAN COMPANY, INC. *and* UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 8–R–1677.—Decided December 23, 1944

Messrs. S. S. Beard, H. A. Eggerss, and *Sprague Jones*, of Van Wert, Ohio, for the Company.

Mr. Julius Holzberg, of Cincinnati, Ohio, and *Mr. Peter P. Haubner*, of Lima, Ohio, for the U. S. A.

Messrs. Charles E. Drury and *Don C. Farlow*, of Van Wert, Ohio, for the Association.

Mr. William V. Montague, of Cincinnati, Ohio, for the UAW-AFL.

Mr. Walter E. Mackey, of Toledo, Ohio, and *Mr. William F. Wydalls*, of Van Wert, Ohio, for District 50.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, C. I. O., herein called the U. S. A., alleging that a question affecting commerce had arisen concerning the representation of employees of The Container Company, Division of Continental Can Company, Inc., Van Wert, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Van Wert, Ohio, on November 18, 1944. At the commencement of the hearing the Trial Examiner granted motions of United Automobile Workers of America, A. F. of L., herein called the UAW-AFL, Container Company Employees Association, herein called the Association, and District 50, United Mine Workers of America, herein called District 50, to intervene. The Company, the U. S. A., the UAW-AFL, the Association, and District 50, appeared at and participated in the hearing and 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 close of the hearing, the Company and the

Association moved to dismiss the petition. The Trial Examiner reserved rulings thereon. The motions are hereby denied. 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

The Container Company is an Ohio corporation and a subsidiary of Continental Can Company, Inc. We are here concerned with its plant at Van Wert, Ohio, where it is engaged in the manufacture of fibre drums and containers. The Company purchases raw materials for use at its Van Wert plant valued in excess of $1,000,000, annually, over 90 percent of which is shipped to it from points outside the State of Ohio. During the same period the Company sells products from its Van Wert plant valued in excess of $1,000,000, over 90 percent of which is shipped to points outside the State of Ohio.

The Company admits, for the purposes of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

United Automobile Workers of America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

Container Company Employees Association is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 29, 1944, the U. S. A. requested the Company to recognize it as the exclusive collective bargaining representative of the employees at the Van Wert plant. The Company refused this request and contends that the petition should be dismissed because the Association was certified as the exclusive representative less than a year ago.

On November 3, 1943, the Company and the Association entered into an exclusive collective bargaining contract. The contract pro-

vided that it should remain in effect from November 21, 1943, to November 21, 1944, and thereafter subject to thirty days notice of cancellation by either party thereto. On December 17, 1943, the Company, the Association, and District 50, entered into a consent election agreement. The election was won by the Association on January 27, 1944. On January 28, 1944, the Regional Director certified the Association.

As a general rule, we do not conduct a new election within a year of a prior certification. Where a contract for a reasonable term has been entered into with a certified representative, in the interest of stability we customarily refuse to disturb such a contractual relationship until the initial period of the contract is about to expire. Here, the certification will be about a year old by the time an election can be concluded and the Association has enjoyed a contractual relationship with the Company for over a year. We, therefore, find that the certification of January 28, 1944, is not a bar to this proceeding.[1] Moreover, since the contract is terminable upon thirty days notice of either party thereto, it obviously is no bar to a determination of representatives at this time.

The Association urges the dismissal of the petition on the ground that a request for a wage increase is presently pending before the National War Labor Board. On November 11, 1944, the Regional War Labor Board denied the request. At the time of the hearing no appeal had yet been taken to the National War Labor Board. We have repeatedly held that the mere submission of a dispute to the War Labor Board for adjudication does not require this Board to delay or refuse to proceed to an immediate determination of a collective bargaining representative where otherwise a valid question concerning representation exists. The Association has had contractual relations with the Company for over a year and has obtained for the employees the benefits of representation throughout that period.[2] In this respect the Association is not in a 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.[3] We conclude that the position of the Association is without merit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the U. S. A. represents a sub-

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[1] See *Matter of McCord Radiator and Manufacturing Company*, 58 N L R B 715; and *Matter of Thompson Products, Inc*, 47 N L R B. 619. Cf *Matter of Aluminum Company of America, Newark Works*; 57 N L R B 913; *Matter of Bohn Aluminum and Brass Corporation*, 57 N L R B 1684.

[2] *Matter of Diamond Magnesium Company*, 57 N L R B 393 and cases cited therein.

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

stantial 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 agreement with a stipulation of the parties, that all production and maintenance employees at the Van Wert plant of the Company, including group leaders, watchmen, and guards, but excluding office employees, firemen, and any 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 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.

The Company employs 61 persons on a part-time basis. They work about 24 hours per week on regular schedules and the Company has maintained such a practice for 8 or 9 years. They are compensated on the same basis as the regular employees and enjoy the same privileges as the latter group. We conclude that they are eligible to vote in the election inasmuch as they work a sufficient number of hours to have a substantial interest in the choice of a bargaining representative.

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 representa-

[4] The Field Examiner reported that the U S A presented 199 authorization cards bearing the names of persons who appear on the Company's pay roll of October 14, 1944. There are approximately 650 employees in the appropriate unit The Field Examiner further reported that the UAW-AFL and District 50 presented 138 and 81 authorization cards respectively bearing the names of persons on the October 14, 1944, pay roll The Association did not present any evidence of representation but relies upon its contract, alluded to above as evidence of its interest in the instant proceeding.

tives for the purposes of collective bargaining with The Container Company, Division of Continental Can Company, Inc., Van Wert, Ohio, 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 Eighth 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 Steelworkers of America, C. I. O., or by United Automobile Workers of America, A. F. of L., or by Container Company Employees Association, or by District 50, United Mine Workers of America, for the purposes of collective bargaining, or by none of said organizations.