

In the Matter of SUMMERILL TUBING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

*Case No. 4-R-1626.—Decided February 27, 1945*

*Mr. T. Ewing Montgomery*, of Philadelphia, Pa., for the Company.  
*Messrs. Witt & Cammer*, by *Samuel Rosenwein*, of New York City, for the UAW-CIO.

*Messrs. Henry L. Shenkle and John Hathaway*, of Norristown, Pa., for the Association.

*Mr. Samuel G. Hamilton*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft, Agricultural Implement Workers of America (UAW-CIO), herein called the UAW-CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Summerill Tubing Company, Bridgeport, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Norristown, Pennsylvania, on January 31, 1945. During the hearing, the Trial Examiner granted the motion to intervene made by Bridgeport Tubing Workers Association, Inc., herein called the Association. The Company, the UAW-CIO, and the Association 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.

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

60 N L R. B., No. 153.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Summerill Tubing Company is a Pennsylvania corporation with a plant, involved in this proceeding, located at Bridgeport, Pennsylvania. It is there engaged in the manufacture and distribution of steel tubing. For this purpose it purchases monthly approximately \$125,000 worth of raw materials, consisting of hot rolled steel tubing, of which approximately 64 percent comes from points outside the Commonwealth of Pennsylvania. The approximate monthly value of its finished products is \$450,000, of which 90 percent is shipped to points outside the Commonwealth.

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

## II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft, Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Bridgeport Tubing Workers Association, Inc., is an unaffiliated labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On December 26, 1944, the UAW-CIO requested recognition from the Company as the exclusive collective bargaining representative of certain of its employees. The Company refused this request on the ground that it was operating under a contract with the Association.

On February 29, 1944, the Company and the Association executed a collective bargaining contract providing, in part, as follows:

## SECTION 16. TERMINATION DATE

(a) This agreement shall continue in force and effect for a period of two years from the date hereof, provided, however, that upon ten days written notice either party may demand the commencement of conferences for the purpose of negotiating any change desired in the terms and conditions of this agreement, and said conferences shall be held at the offices of the Company in Bridgeport, Montgomery County, Pennsylvania, unless otherwise mutually agreed.

(b) If after negotiations and within thirty days from the date of said written notice the parties cannot agree upon the said change or changes desired, by written agreement, then this agreement and all the provisions hereof shall terminate after the expiration of sixty days from the date of the said written notice.

At the hearing, the Company and the Association raised the February 29, 1944, contract as a bar to a present determination of representatives. However, by requesting changes to which it knows the other will not agree, either party may unilaterally cause the termination of the agreement at any time. Thus, the agreement is tantamount to a contract terminable at will and hence no bar to the instant proceeding.<sup>1</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the UAW-CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</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

We find, in accord with a stipulation of the parties, that all employees of the Company at its Bridgeport, Pennsylvania, plant, including probationary employees, but excluding salaried employees, clerical employees, watchmen, plant-protection employees, executives, foremen, bench foremen, assistant foremen, 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, and persons on temporary loan to the Company from other companies by virtue of the War Manpower Commission's request that persons in non-essential industries transfer for the duration of the emergency to war plants, 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 em-

<sup>1</sup> See *Matter of Ionia Desk Company*, 59 N. L. R. B. 1522, and cases therein cited.

<sup>2</sup> The Field Examiner reported that the UAW-CIO submitted 344 application for membership cards; that the names of 294 persons appearing on the cards were listed on the Company's pay roll of January 20, 1945; that there were 478 employees in the unit alleged in the petition to be appropriate; and that the cards were dated: 145 in September 1944, 55 in October 1944, 15 in November 1944, 23 in December 1944, and 56 in January 1945.

The Association relies upon its contract to establish its interest in this proceeding.

ployees 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.<sup>3</sup>

### 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 Summerill Tubing Company, Bridgeport, 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 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 U. A. W.-C. I. O., or by Bridgeport Tubing Workers Association, Inc., for the purposes of collective bargaining, or by neither.

---

<sup>3</sup> The UAW-CIO requested that it be designated on the ballot as "U. A. W.-C. I. O." This request is hereby granted.