

In the Matter of BOECKELER ASSOCIATES AND CHEMPROTIN PRODUCTS
and OIL WORKERS INTERNATIONAL UNION, C. I. O., AND LOCAL 456,
OIL WORKERS INTERNATIONAL UNION, C. I. O.

Cases Nos. 7-R-1922 and 7-R-1932.—Decided March 15, 1945

Messrs. R. I. Marquis and Daniel J. Tindall, of Detroit, Mich., for the Companies.

Maurice Sugar and Jack N. Tucker, by Mr. Jack N. Tucker, of Detroit, Mich., for the C. I. O.

Mr. S. G. Lippman, of Chicago, Ill., for the AFL.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petitions duly filed by Oil Workers International Union, C. I. O., and Local 456, Oil Workers International Union, C. I. O.,¹ herein collectively called the CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Boeckeler Associates and Chemprotin Products,² Trenton, Michigan, herein collectively called the Companies, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on February 2, 5, and 6, 1945. The Companies, the CIO, and Local 66, Distillery, Rectifying, and Wine Workers International Union of America, A. F. L., herein called the AFL, 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 reserved for the Board rulings on (1) the Companies'

¹ Local 456, Oil Workers International Union, C. I. O., was made a party to this proceeding by amendment at the hearing.

² The Companies are limited partnerships comprised of identical partners. For convenience, all parties stipulated that they should be referred to throughout this proceeding by their business names.

motion to dismiss the petitions on the ground that their employees were ineligible for membership in the CIO; (2) the AFL's motion to dismiss the petitions, because (a) the employees of the Companies are not eligible for membership in the CIO, (b) the designations submitted by the CIO carried the name of Local 456 rather than of the International on all but five of the cards submitted to the Board as evidence of representation, and (c) the amendment adding Local 456 as a petitioner was made under such circumstances as to render impossible the investigation required by the Act. The AFL further moved that the CIO be required to waive as a ground for possible objections to the election any matter revealed at the hearing.³ We find no merit in any of these motions and they are all hereby 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Boeckeler Associates, a limited partnership organized under the laws of Michigan, is engaged in the manufacture of industrial alcohol which is used in the manufacture of synthetic rubber and black smokeless powder. During its last fiscal year, Boeckeler Associates purchased raw materials for use in its manufacturing operations valued in excess of \$3,000,000, almost all of which was purchased outside the State of Michigan. During the same period, Boeckeler Associates produced finished products valued at more than \$4,000,000, all of which was shipped to points outside the State of Michigan.

Chemprotin Products, like Boeckeler Associates, a limited partnership organized under the laws of Michigan, is engaged in the manufacture of gluten and grain suspensions. During its last fiscal year, Chemprotin Products purchased raw materials valued at more than \$320,000, all of which was purchased outside the State of Michigan. During the same period, Chemprotin Products sold manufactured products valued in excess of \$350,000. All of the gluten was shipped to points outside the State of Michigan while the grain suspensions were sold to Boeckeler Associates.

We find that the Companies are engaged in commerce within the meaning of the National Labor Relations Act.

³ Evidence that a reorganization meeting of the AFL was held during working hours on company property was introduced at the hearing. However, no unfair labor practice charges have been filed by the CIO.

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union and Local 456, Oil Workers International Union, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

Local 66, Distillery, Rectifying, and Wine Workers International Union of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 27, 1943, the Companies and the AFL entered into a collective bargaining contract for the period of 1 year to and including December 3, 1944. The contract provided that "It shall automatically be continued from year to year unless either party gives notice in writing of desire to modify, alter, or change the provisions of the agreement, thirty days prior to the expiration date." On October 31, 1944, the AFL pursuant to the terms of the contract, notified the Companies in writing of its desire to change the provisions of the agreement. Thereafter several conferences between the bargaining committee of the AFL and the Companies were held until on December 4, 1944, a tentative agreement on all matters in dispute except the wage issue was reached. This agreement was, however, never signed by either party. On December 4, 1944, the membership of the AFL voted to reject the contract draft in its entirety and to strike unless the Companies put forth satisfactory wage proposals by the following morning. This ultimatum not having been complied with the employees struck on December 5, 1944, and remained out on strike until December 13, 1944. Meanwhile, employees of the Companies solicited membership in the CIO and on December 9, 1944, commenced signing application cards for membership in that union. On December 11, 1944, at a regular monthly meeting, a motion to dissolve the AFL was passed by members present. On December 12, 1944, the CIO, in a telegram to the Companies, stated that it represented a majority of the employees and requested a meeting for the purpose of negotiating a new contract. This telegram remained unanswered. The parent organization of the AFL, claiming that the attempted dissolution was illegal and hence null and void held a reorganization meeting, appointed new officers of the local, and resumed negotiations for a new contract which was finally signed by the AFL and the Companies on January 22, 1945.

The AFL contends that the contracts and all the circumstances of the case should constitute a bar to this proceeding. Admitting in its brief that the facts in this case do not fall squarely within any recognized decisions of the Board barring an election, the AFL neverthe-

less contends that "it would be inequitable and seriously disturbing to sound labor relations to direct the holding of an election at this time." We find no merit in this contention. The AFL further argues, *inter alia*, that the December 12, 1944, notice which the CIO served upon the Companies was ineffective because it was not given prior to the automatic renewal date of the original contract. This argument would have some weight if the automatic renewal clause had in fact become operative; here, however, the AFL had, pursuant to its terms, served written notice of a desire to alter the provisions of the contract, thereby terminating it and rendering the automatic renewal clause inoperative.⁴ We find that none of the contracts or proposed contracts constitute a bar to this proceeding since the September 27, 1943, contract expired on December 3, 1944, as the result of the notice from the AFL; the proposed contract agreed to by the negotiators for the AFL and the Companies on December 4, 1944, was repudiated by the membership of the AFL and was never signed;⁵ and the contract of January 22, 1945, was executed after the Companies had received notification of the CIO's conflicting claim of representation.⁶

Both the Companies and the AFL assert that the employees involved in this proceeding are ineligible for membership in the CIO under the constitution and bylaws of that organization and that, therefore, the CIO's petition should be dismissed. We have considered similar arguments in other cases and have uniformly held that the constitutional right of a petitioning union to accept particular employees as members is immaterial in the absence of any proof that the union will not adequately represent such employees.⁷

A statement of a Board agent introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.⁸

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in substantial accord with an agreement of the parties, that all production and maintenance employees of the Companies,

⁴ *Matter of Lamm Lumber Company*, 56 N. L. R. B. 1361; *Matter of Memphis Furniture Mfg Co*, 51 N. L. R. B. 1447.

⁵ *Matter of Ecor, Inc*, 46 N. L. R. B. 1035.

⁶ *Matter of Dickson-Jenkins Manufacturing Company*, 57 N. L. R. B. 1095.

⁷ *Matter of Virginia Smelting Company*, 60 N. L. R. B. 616; *Matter of Platzer Boat Works*, 59 N. L. R. B. 292.

⁸ The Field Examiner reported that the CIO submitted 153 application cards; that the names on 138 of the cards also appeared on the Companies' pay roll for the period ending December 28, 1944, which contained the names of 174 employees in the appropriate unit; and that 148 of the cards were dated in December 1944, while 5 were undated. The AFL relies on its contract to establish its interest.

excluding office and clerical employees, watchmen, technically trained laboratory employees, 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, 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 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 Boeckeler Associates and Chemprotin Products, Trenton, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh 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 they desire to be represented by Oil Workers International Union, C. I. O., and Local 456, Oil Workers International Union, C. I. O., or by Local 66, Distillery, Rectifying, and Wine Workers International Union of America, A. F. L., for the purposes of collective bargaining, or by neither.