

In the Matter of NORTH AMERICAN PHILIPS COMPANY, INC., EMPLOYER AND PETITIONER *and* LOCAL 454, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO *and* UNION OF WORKERS IN THE RADIO, MACHINE AND ELECTRICAL INDUSTRY OF WESTCHESTER COUNTY, N. Y. *and* INTERNATIONAL ASSOCIATION OF MACHINISTS

Case No. 2-RM-33.—Decided July 29, 1948

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Dobbs Ferry, New York, on April 5, 1948, before Herbert C. Kane, hearing officer.¹ At the hearing the Employer offered in evidence a photostatic copy of a letter dated December 30, 1947, received by it from U. E. Local 454, wherein the latter stated that it was exercising the option to terminate the then existing contract. This letter was rejected by the hearing officer as being immaterial and irrelevant. Upon consideration, we find that the letter is material and relevant. We therefore overrule the hearing officer's action in rejecting the letter and herewith admit it in evidence.

The hearing officer permitted U. E. Local 454, U. E. District 4, and the U. E. International to intervene at the hearing. U. E. District 4 was not a party to any contract covering employees of the Employer. It is hereinafter determined that U. E. Local 454 gave timely and proper notice to the Employer to terminate, and the U. E. International had no real interest in the contract covering the employees in question. Inasmuch as U. E. Local 454, U. E. District 4, and the U. E. International are not in compliance with Section 9 (f), (g), and (h) of the Act, we reverse the ruling of the hearing officer and find that the intervention was improper.² All other rulings made by the

¹ At the hearing, Local 454 of United Electrical, Radio & Machine Workers of America, CIO, was referred to as U. E. Local 454; United Electrical, Radio & Machine Workers of America, CIO, was referred to as the U. E. International; Union of Workers in the Radio, Machine and Electrical Industry of Westchester County, N. Y., was referred to as the Independent, and the International Association of Machinists was referred to as the IAM. We will do likewise.

² *Matter of Campbell Soup Company*, 76 N. L. R. B. 950; *Matter of Precision Castings Company, Inc.*, 77 N. L. R. B. 261.

hearing officer at the hearing are free from prejudicial error and are hereby affirmed.

.. Upon the entire record in the case, the National Labor Relations Board³ makes the following:

FINDINGS OF FACT

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations named below claim to represent employees of the Employer.

3. We find that a question of representation exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act upon the following facts.

Pursuant to a consent election held in 1943,⁴ the Employer recognized U. E. Local 454 as the bargaining representative of the employees herein sought. On January 30, 1946, the Employer and U. E. Local 454 executed a contract covering all hourly paid employees in the production and maintenance department at the Dobbs Ferry, New York, plant. This contract was in force and effect until March 1, 1948, and was to continue thereafter for a period of 1 year unless at least 60 days before the expiration date written notice by registered mail to terminate was given by any one party to the other two parties to the agreement. This contract was signed by the Employer, U. E. Local 454, and the U. E. International.

On December 30, 1947, U. E. Local 454 mailed a letter to the Employer wherein it stated that it was exercising its right under the termination clause. The record does not indicate that U. E. Local 454 mailed any such notice to the U. E. International. On December 31, 1947, the Employer mailed written notices of contract termination to U. E. Local 454 and to the U. E. International. The latter received this notice on January 2, 1948.

On February 11, 1948, the Independent notified the Employer that the Independent represented its employees; and on February 13, 1948, the Employer filed the instant petition.

The U. E. International contends that adequate and timely notice to terminate was not given prior to the automatic renewal date of the contract, and that the contract is, therefore, a bar to the petition filed by the Employer. We do not agree.

³ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Houston, Reynolds, and Gray].

⁴ Case No. 2-R-4175

The contract was in effect until March 1, 1948, and for 1 year thereafter unless notice to terminate was given at least 60 days prior thereto. The notice by U. E. Local 454, mailed on December 30, 1947, at Dobbs Ferry, New York, to the Employer at Dobbs Ferry, New York, presumably was received by the Employer no later than December 31, 1947, which was prior to the date of automatic renewal. We find that this notice, marked as Company Exhibit No. 9, was adequate in content and timely given. The fact that U. E. Local 454 may have failed to give notice to the U. E. International as provided in the contract is not a sufficient basis for invoking the contract as a bar to a petition for a certification of representatives, since the U. E. International has no real interest in the contract but is merely a nominal party thereto.⁵

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: all hourly paid production and maintenance employees at the Employer's Dobbs Ferry, New York, plant, including probationary employees,⁶ but excluding temporary employees,⁷ clerical employees and supervisors.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees

⁵ The contract was one essentially between the Employer and its employees. *Matter of Inman Mills*, 63 N. L. R. B 198. U. E. Local 454, referred to in the contract as "*the Union*," was specifically designated therein as the sole bargaining agent of the employees, and the contract had for its stated purpose the establishment of harmonious relations between the Employer and "*the Union*." Although the U. E. International signed the contract, all contractual obligations set forth in the contract were between the Employer and "*the Union*." Nowhere in the body of the contract was reference made to the U. E. International.

⁶ While new employees are under a 2-month probationary period of employment, in most instances they do become permanent employees. We therefore include probationary employees in the appropriate unit.

⁷ Occasionally, the Employer hires temporary employees for short periods of time to perform specific jobs, and the employees are fully informed of their temporary status at the time of such employment. We find that temporary employees are properly excluded from the unit.

who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by the Union of Workers in the Radio, Machine and Electrical Industry of Westchester County, N. Y., or by the International Association of Machinists, or by neither.