

In the Matter of WELLS MANUFACTURING CORPORATION,¹ EMPLOYER
and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, PETITIONER

Case No. 13-RC-417.—Decided July 6, 1949.

DECISION

AND

DIRECTION OF ELECTION

Under a petition duly filed, a hearing was held before Herman J. DeKoven, hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Gray].

Upon the entire record in the case, the National Labor Relations Board finds:

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

2. The organizations involved:

The Petitioner is a labor organization claiming to represent employees of the Employer.

The United Farm Equipment and Metal Workers of America, CIO, and its Local 172, herein referred to individually as the F. E. and Local 172, respectively, and collectively as the Intervenors, are labor organizations claiming to represent employees of the Employer.

3. The question concerning representation:

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

Among the grounds urged by the Intervenors as a basis for dismissal of the petition was that the question of representation is a jurisdictional dispute between two affiliates of a parent union. Because it

¹ The Employer's name appears as amended at the hearing.

does not appear that there will be an immediate resolution of the dispute without resort to the administrative processes of the Act, we find no merit in such contention.²

The Intervenors further urge a contract bar with respect to the present proceeding. The Employer takes no position concerning this issue. The Intervenors since 1943 have negotiated joint collective bargaining agreements with the Employer covering a production and maintenance unit which was established as the result of a Board election. The most recent contract between the Employer and the Intervenors covering the employees involved was for a period of 1 year from March 7, 1948. This contract provided for its automatic renewal thereafter from year to year in the absence of notice by either party at least 60 days prior to the termination date, of a desire to change or terminate the contract. By letter dated September 20, 1948, the Petitioner demanded recognition as bargaining representative of employees of the Employer, and on October 19, 1948, filed its petition. Under well-established Board policy, we find the contract is not a bar to the present proceedings.³

The Intervenors contend in their brief that the proceeding should be dismissed upon the ground that the Petitioner is "fronting" for a noncomplying local. It appears that on September 20, 1948, or shortly thereafter, a group of employees of the Employer withdrew their membership from the Intervenors and elected temporary officers for the purpose of aiding the Petitioner in its organizational efforts at the Employer's plant. Although this organization which sought affiliation with the Petitioner, has not yet received its charter and is not a fully perfected local, it has engaged in an organizational drive, has held regular monthly meetings and, as noted above, has elected temporary officers who are actively in charge of its affairs. Under these circumstances, we believe that it exists as a functioning local union of the Petitioner. Although such local is not a formal party to this proceeding, the record indicates that it will have an interest in any contract obtained by the Petitioner pursuant to the election directed herein. Because of the interest of such local, which is not in compliance with the filing requirements of the Act, we shall not entertain the instant petition unless the local achieves a status of compliance.⁴ Accordingly, if within 2 weeks from the issuance of this Decision and Direction of Election, the local is not in compliance with Section 9 (f), (g), and (h) of the Act, the petition of International Union, United

² See *Matter of Gerity Michigan Corporation*, 78 N. L. R. B. 94.

³ See *Matter of Tin Processing Corporation*, 80 N. L. R. B. 1369, and cases cited therein. Since we have found that the contract does not constitute a bar to this proceeding, we find it unnecessary to resolve an issue of disaffiliation raised by the Petitioner.

⁴ See *Matter of United States Gypsum Company*, 81 N. L. R. B. 292.

Automobile, Aircraft and Agricultural Implement Workers of America, CIO, will be dismissed.

We find that a question affecting commerce 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.

4. The appropriate unit:

We find, in substantial accord with the agreement of the parties, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: all production and maintenance employees at the Employer's Fond du Lac, Wisconsin, plant, excluding executive, office and clerical employees, guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION ⁵

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, as amended, 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 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, or by United Farm Equipment and Metal Workers of America, CIO,⁶ or by neither.

⁵ Any participant in the election directed herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

⁶ In accordance with the request of Local 172 of the United Farm Equipment and Metal Workers of America, CIO, the name of such local is omitted from the ballot.