

In the Matter of UTICA STRUCTURAL STEEL, INC., EMPLOYER and MECHANICS EDUCATIONAL SOCIETY OF AMERICA, PETITIONER

Case No. 3-RC-328.—Decided November 4, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before John C. McRee, hearing officer. 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 [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. The question concerning representation:

A local of the Intervenor, International Association of Bridge, Structural and Ornamental Iron Workers, A. F. L., has been the contractual representative of the employees sought by the Petitioner since 1938. In May 1949, both the Employer and the Intervenor gave timely notice that they wished to change their contract of August 6, 1948, which was to expire on July 31, 1949.¹ On July 29, 1949, the Employer and Shopmen's Local 593, of the Intervenor executed a memorandum agreement which purported to extend the contract for another year. On the same day, the Petitioner made its claim for recognition as the bargaining representative of the Employer's employees.²

On August 4, 1949, the Employer and Local 593 signed a formal agreement, effective as of August 1, 1949, which, except for minor changes suggested by the vice president of the Intervenor, who was

¹ Although the local was the signatory party, it was the International which sent the notice to the Employer and received the notice from the Employer.

² In view of our disposition of the case, it is unnecessary to determine whether the memorandum agreement was signed before or after the Employer was first apprised of the Intervenor's claim for recognition.

present, contained the same terms as the August 6, 1948, agreement. The contract was then forwarded for approval to the Intervenor. George Cooper, International representative of the Intervenor, testified that the agreement had to be approved as to form by the International, and that no agreement could be "fully negotiated" until such approval was obtained. The Intervenor approved the contract and returned it to the Employer by August 9, 1949. Under these circumstances, we find that the contract was not finally executed until after the Petitioner had made its claim for recognition.³ Therefore, the contract does not constitute a bar to the instant proceeding, and the motions of the Employer and the Intervenor to dismiss on this ground are hereby denied.

Accordingly, 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:

In accordance with the stipulation of the parties, we find that all the production and maintenance employees at the Employer's Utica, New York, plant, excluding truck drivers, outside erection employees,⁴ office and clerical employees, watchmen, guards, professional employees, superintendents, foremen, assistant foremen, and other supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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, 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

³ *Matter of Quaker State Oil Refining Corp. (McKean Plant)*, 81 N. L. R. B. 611; *Matter of Sprague Electric Co.*, 81 N. L. R. B. 410.

⁴ The outside erection employees are represented by a different local of the Intervenor. All the parties stipulated to their exclusion from the unit herein involved.

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 Mechanics Educational Society of America, or by Shopmen's Local 593, International Association of Bridge, Structural and Ornamental Iron Workers,⁵ A. F. L., or by neither.

⁵ At the hearing the Intervenor indicated that it wished Local 593 to appear on the ballot.