

In the Matter of **STERLING TOOL & MFG. CO., EMPLOYER** and **EWALD
J. BRAUN, PETITIONER**

Case No. 13-RD-51.—Decided April 4, 1950

**DECISION
AND
DIRECTION OF ELECTION**

Upon a petition duly filed, a hearing was held before Irving M. Friedman, 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 [Members Houston, Reynolds, 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 organization involved claims to represent certain employees of the Employer.

3. 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.

At the hearing, District No. 10, International Association of Machinists,¹ moved to dismiss the petition, urging that a contract is in existence between the Union and the Employer and that it is a bar to this decertification proceeding. An agreement between these parties, effective June 1, 1948, and covering the employees in question here, provided for an initial 1-year term, thereafter was to run indefinitely until 60-day notice to modify or terminate should be given by either party.

On April 1, 1949, the Union gave notice to the Employer that it wished to negotiate changes in the contract. The Employer acknowledged this notice and a meeting for this purpose ensued. Thereafter,

¹ A charge filed by the Union against the Employer in Case No. 13-CA-456 was dismissed by the Regional Director on March 3, 1950.

on June 8, 1949, the Employer wrote to the Union saying that its business outlook was not good, as it had explained at their meeting, and offering to "continue the old contract as is, reserving our rights to request changes when and if conditions warrant." By letter of September 24, 1949, the Union replied to the June 8 offer, saying it was "agreeable to the Union to comply with your request of extending the present agreement to June 1st of 1950."

The present petition for decertification was filed October 18, 1949, and on October 28, the Employer's attorney wrote the Union, pursuant to the June 1, 1948,² agreement, giving notice of termination effective December 31, 1949.

The Employer contends that its June 8 letter was an offer to continue the indefinite term of the June 1, 1948, contract. The Union contends, in effect, that the offer was to renew the contract for a fixed term ending June 1, 1950, without right to modify before that time, which offer it accepted. We find, from the exchange of correspondence between these parties that whatever the terminal date of the contract as extended, the right to modify was clearly reserved. Consequently the contract in effect when the petition was filed was terminable at will on 60-day notice and constituted no bar to the petition.³ In any event, assuming the contract was extended as the union contends, its term is about to expire.

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees of the Employer at its Milwaukee, Wisconsin, plant, excluding executives and supervisors⁴ as defined in 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

² The letter actually said June 1, 1949, but the Employer introduced evidence that this was a typographical error. The point is not important to our determination.

³ *The Beach Co.*, 72 NLRB 510; *Mid-Continent Coal Corporation*, 82 NLRB 261; *The Broderick Company (Header-Press Division)*, 85 NLRB 708.

⁴ It is apparent from the unit stipulation of the parties that working foremen are not regarded as supervisors.

employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll 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 or not they desire to be represented, for purposes of collective bargaining, by District No. 10, International Association of Machinists.⁵

⁵ The compliance of District 10 of the IAM with Section 9 (h) of the Act lapsed as of January 9, 1950. Accordingly, if the Union wins the election and has not yet complied with such requirement, the Board will certify only the arithmetical results of the election. See *American Smelting and Refining Company*, 80 NLRB 68, and cases cited herein.