

In the Matter of WHIPPANY PAPER BOARD COMPANY, INC., and PAPER
WORKERS ORGANIZING COMMITTEE, C. I. O.

Case No. 4-R-1652.—Decided April 12, 1945

Mr. Nicholas R. Fiore, of Newark, N. J., for the Company.
Rothbard & Talisman, by *Mr. Bernard Cherny*, of Newark, N. J.,
for the CIO.

Mr. Roy Dugan, of Newark, N. J., for District 50.

Miss Ruth Rusch, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Paper Workers Organizing Committee, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Whippany Paper Board Company, Inc., Whippany, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Passaic, New Jersey, on March 23, 1945. The Company, the CIO, and District 50, United Mine Workers of America, herein called District 50, appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, District 50 moved to dismiss the CIO's petition on the ground that its contract with the Company and a pending proceeding before the National War Labor Board constitute bars to the present proceeding. The Trial Examiner reserved ruling on District 50's motion for the Board's determination. For reasons stated in Section III, *infra*, the motion is 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.

¹ At the hearing, the Trial Examiner granted a motion to intervene made by District 50. 61 N. L. R. B., No. 69.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a New Jersey corporation engaged in the manufacture of paper board which is used in packing and shipping. During the past year, the Company purchased raw materials consisting of various grades of waste paper and chemicals and amounting to more than \$835,000 in value, of which 60 percent came from sources outside the State of New Jersey. In the same period, the Company sold finished products amounting to more than \$1,800,000 in value, of which 70 percent was shipped to points outside the State of New Jersey.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Paper Workers Organizing Committee is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

District 50 is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of its production and maintenance employees until the CIO has been certified by the Board in an appropriate unit.

The Company and District 50 executed a collective bargaining contract which became effective on April 12, 1944, for a period of 1 year and which contains the usual 30 day automatic renewal clause. The agreement also provides that the question of wage rates may be opened for negotiation at any time during the term of the contract, on 30 days notice from District 50. The CIO's request for recognition and its petition herein antedated the automatic renewal date of the contract. The contract, therefore, does not operate to bar an investigation of representatives.

In September 1944, District 50 requested a meeting to discuss wage negotiations. The Company rejected District 50's proposals for wage increases at a conference which was then held. Thereafter, a hearing was held on November 13, 1944, under the auspices of the National War Labor Board. The hearing officer subsequently denied the wage

increases and on January 10, 1945, the Regional War Labor Board upheld the hearing officer's recommendations in an Interim Directive Order. District 50 appealed the decision on January 23, 1945, and it urges that this proceeding, which is now pending before the National Board, bars a present determination of representatives. We find no merit in this contention. The pendency of proceedings before the War Labor Board does not *per se* constitute a bar to a determination of representatives, nor do the facts here presented warrant application of the doctrine enunciated in *Matter of Allis Chalmers Manufacturing Company* and similar cases.²

A statement of a Field Examiner introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.³

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

IV. THE APPROPRIATE UNIT

We find, in accordance with the stipulation of the parties, that all the Company's employees at its plant located at Whippany, New Jersey, excluding office and clerical employees, teamsters,⁴ foremen, superintendents, assistant superintendents, supervisors, and all other 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.⁵

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

² *Matter of The Morrow Manufacturing Company, Division of the Wacker Corporation*, 59 N. L. R. B. 90; *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268; see also *Matter of Thompson Products, Inc.*, 60 N. L. R. B. 885; cf. *Allis Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Taylor Forge & Pipe Works*, 58 N. L. R. B. 1375.

³ The Field Examiner reported that the CIO submitted 65 authorization cards, all of which bore the names of persons listed on the Company's pay roll, which contained the names of 70 employees in the appropriate unit. The cards were dated: 41 in November 1944, 10 in December 1944, and 14 in February 1945.

District 50 presented no evidence, but relies on its contract as proof of its interest in this proceeding.

⁴ The parties agreed that by teamsters, they mean over-the-road drivers.

⁵ This is the same unit which is covered by the contract between the Company and District 50.

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 Whippany Paper Board Company, Inc., Whippany, New Jersey, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 the Direction, including employees who did not work during 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 Paper Workers Organizing Committee, C. I. O., or by District 50, United Mine Workers of America, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.