In the Matter of RED JACKET MANUFACTURING COMPANY *and* UNITED FARM EQUIPMENT AND METAL WORKERS OF AMERICA, CIO

Case No 18–R–1262 —Decided June 22, 1945

Mr F. C. Simonsen, of Davenport, Iowa, and *Mr. Ben F. Reidy*, of Rock Island, Ill., for the Company

Meyers and Meyers, by *Mr Ben Meyers*, of Chicago, Ill., for the C. I. O.

Mr. W. H. Clawson, of Moline, Ill., and *Mr James Ashe*, of St. Paul, Minn., for the I. A. M.

Mr William Parkins, of Davenport, Iowa, for the Molders

Miss Helen Hart, of counsel to the Board

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Farm Equipment and Metal Workers of America, CIO, herein called the C I O, alleging that a question affecting commerce had arisen concerning the representation of employees of Red Jacket Manufacturing Company, Davenport, Iowa, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stanley D Kane, Trial Examiner. Said hearing was held at Davenport, Iowa, on April 27, 1945. At the commencement of the hearing, the Trial Examiner granted motions to intervene made by International Association of Machinists, District 102, Local 388, AFL, herein called the I A M., and International Molders and Foundry Workers of North America, Local 230, herein called the Molders. The Company, the C I O., the I. A M., and the Molders appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues At the close of the hearing, the I A M and the Molders each moved to dismiss the petition in its entirety For reasons set forth hereinafter, the motions are denied.

62 N L R B, No. 94.

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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Red Jacket Manufacturing Company, an Iowa corporation, owns and operates a plant in Davenport, Iowa, which manufactures pumps, water conditioners, water systems and similar products. During 1944, the Company purchased raw materials valued in excess of $100,000, at least 90 percent of which was shipped to the plant from points outside the State of Iowa During the same year, the Company manufactured finished products valued in excess of $100,000, 90 percent of which was transported to points outside the State of Iowa Forty-five percent of the Company's total production is consigned to the use of the armed forces

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

II. THE ORGANIZATIONS INVOLVED

United Farm Equipment and Metal Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Association of Machinists, District 102, Local 388, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company

International Molders and Foundry Workers of North America, Local 230, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company

III. THE QUESTION CONCERNING REPRESENTATION

Following an election conducted by the Board in which the Molders and the I. A. M. obtained a majority vote in their respective units, the Molders and the I. A. M. were certified by the Board in January 1942, the Molders as the collective bargaining representative for foundry employees and the I. A. M. as the bargaining agent for the remaining employees of the Company.[1] Pursuant to these certifications, the Company, the Molders, and the I A. M. entered into their first contract as of March 1942, and in April 1943 executed a revised contract Although each of these contracts was a single instrument, in each the Company recognized the Molders as the representative of the employees in the unit in which it was certified and the I A. M. as the agent of the employees in the unit in which it was designated,

[1] *Matter of Red Jacket Manufacturing Co*, 36 N L R B 932, 38 N L R B 468

and each of these contracting unions entered into both contracts and signed them on its own behalf as a separate and distinct entity. Negotiations with the Company leading to these contracts were conducted by representatives from each contracting union and one never acted on behalf of the other. In addition, each union had its own grievance committee and the Company met with each committee separately.

The 1943 contract is raised by the Company, the I. A. M., and the Molders as a bar to this proceeding. This contract, effective for a period of 1 year from April 5, 1943, provided for automatic renewal from year to year thereafter, unless terminated by written notice 60 days prior to any anniversary date. It provided, also, that 60 days prior to any anniversary date, the agreement could be "opened" for any changes desired by any party by written notification to that effect and that the parties would "meet for the purpose of endeavoring to consummate a new Agreement."[2]

The 1943 agreement was automatically renewed in 1944, and none of the parties gave notice 60 days prior to April 5, 1945, in accordance with the termination provisions of the contract. On February 21, 1945, however, the Molders wrote the Company as follows:

> As provided for in Article XI of our contract dated April 5, 1943, and renewal dated April 5, 1944, we desire to renegotiate for the purpose of drawing up a new contract and hereby request representatives of the Red Jacket Manufacturing Company to meet with us at their earliest convenience for this specific purpose. The subject we wish to discuss at this time is contained in Article X of the present contract and has to do entirely with wages.

The Company and the Molders admit that this letter, received by the president of the Company on February 21, 1945, was antedated to February 5, 1945, in order to comply with the 60-day notice requirement of the contract. The Company and the Molders met on approximately five occasions thereafter, with reference to the matter of wages, and the I. A. M. did not participate in these bargaining conferences. In March 1945, the Molders and the Company reached an agreement on wages and planned to submit this agreement to the National War Labor Board for confirmation as soon as the membership of the Molders approved it. The president of the Company then communicated with "the last members that [he] was familiar with who were representing the [I. A. M.]," and through them invited the I. A. M. to join in the application respecting wages to be submitted to the National War Labor Board.[3] To date, however, the I. A. M. has not indi-

[2] In view of the record and the language contained in this clause, we construe it to mean that notice to "open" the contract for changes was equivalent to notice to terminated with intent to negotiate a new agreement

[3] The president of the Company testified that he did not tender this invitation to the business agent of District 102 of the International Association of Machinists, and the latter testified that neither the Company nor the Molders notified him of the "opening" of the 1943 contract.

cated its willingness to revise the 1943 contract.[4] In a letter dated March 22, 1945, the C. I. O. requested a conference with the Company for the purpose of entering into contract negotiations, the C. I. O. claiming it represented a majority of the Company's employees. The original petition of the C. I. O. was filed herein 2 days later on March 24 and, therefore, the Company did not reply directly to the C. I. O. but wrote the Regional Director of the Eighteenth Region that it could not recognize the C I. O. because of its contract with the I. A. M. and the Molders.

The contracting parties contend that, by the failure of any party to give notice to terminate or "open" the contract for changes on or before February 5, 1945, the contract was automatically renewed and consequently precludes a present determination of representatives. The C. I O contends however, that the contract was "opened" by the negotiations between the Company and the Molders and that the Molders was acting not only for itself but also on behalf of the I. A. M.

It is clear that the Molders and the I. A. M participated in bargaining negotiations leading to both the 1942 and 1943 contracts as separate, distinct parties, each representing a single group of employees. In both the 1942 and 1943 contracts, the Company recognized each union individually and each union signed the contracts on its own behalf. Furthermore, each union conducted its activity in the plant during this 3-year period by means of separate grievance committees In these circumstances, we find that each contract, although consisting of a single document for convenience, was, in effect, two separate agreements. Neither the Company nor the I. A. M. gave the requisite timely notice in 1945 for staying the operation of the automatic renewal clause of the 1943 contract While the Company sought to alter this contract insofar as the I. A. M. was concerned subsequent to the effective date of the automatic renewal clause, the I. A. M. did not acquiesce. In the past the Molders never acted as agent for the I A. M and there is no evidence that it was so acting in connection with the 1945 negotiations. Consequently, we conclude that the Company's unilateral action does not warrant a finding that the 1943 contract was not renewed with respect to the I. A M.[5] Since the units established by the Board in its prior certifications are still appropriate, as found in Section IV, below, we find that the 1943 contract is a bar to an immediate determination of representatives for the employees represented by the I. A. M., and that no question of representation exists as to these employees.

It is also true that in 1945 neither the Company nor the Molders gave seasonable notice under the contract However, these parties, by their dealings subsequent to February 5, 1945, mutually waived the strict require-

[4] The president of the Company testified that it was the policy of the Company not to favor one particular group of employees and that the Company, therefore, sought to have the I A M join in the application to the National War Labor Board

[5] See *Matter of Marvel-Schebler Division, Borg-Warner Corp.*, 56 N. L R B. 105.

ments of the termination provisions of the 1943 contract and plainly treated the letter of February 21, 1945, as timely We find, accordingly, that the 1943 contract was not renewed as respects the Molders and does not bar a current determination of representatives for the employees it represents.[6]

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C I. O represents a substantial number of employees in the unit of foundry employees hereinafter found appropriate.[7]

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

IV. THE APPROPRIATE UNIT

The C. I. O. contends that a plant-wide unit of all production and maintenance employees, including inspectors and working foremen,[8] is appropriate This unit would include all the employees in both units which have been previously found by the Board to be appropriate.[9] The Company, the Molders, and the I. A. M. contend that the two separate units already established by the Board are appropriate.

The evidence indicates that there has been substantially no change in the operation of the Company's plant or in its physical structure since the Board's findings in 1942 that the 2 units sought by the I A M and the Molders were appropriate. There is still little interchange of employees between the foundry and the remainder of the plant, the president of the Company having testified that only 2 such transfers had occurred since March 1942 Separate supervision is still maintained. There are approximately 40 employees in the foundry unit and 90 employees in the residual unit and the work of each is distinct from that of the other. Since 1942, collective bargaining has been carried on in the plant on this 2-unit basis.

In view of the facts stated alone, we find that the unit sought by the C I O is inappropriate and that the two units, one of foundry employees and the other of remaining employees, are appropriate

We find that the following groups of employees of the Company constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1 All foundry employees, including employees in the following departments: pattern; flask, core, bench molding; floor molding; squeezer mold-

---

[6] See *Matter of Pressed Metals of America, Inc*, 59 N L R B 360

[7] The Field Examiner reported the following findings the C I O submitted 111 cards and the names of 98 persons appearing on the cards were listed on the Company's pay roll of April 21, 1945, which contained the names of 125 employees in the plant-wide unit the C I O alleges to be appropriate, 105 of the cards were dated March 1945, and 6 in April 1945, the C I O presented cards for 39 of the 40 employees in the unit of foundry employees hereinafter found appropriate, and for 59 of the 85 employees in the residual unit, hereinafter found appropriate, and the I A M and the Molders relied on their contract as evidence of their respective interests

[8] There are no inspectors or working foremen as such

[9] See footnote 1, *supra*.

ing; shake out; foundry labor, melting, iron and coke, cleaning and grinding; foundry inspection, weighing and shipping, and brass foundry; but excluding employees in mill room performing machine-shop work, watchmen, janitors, clerical employees, salesmen, office employees, foremen, and other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. All employees in the following departments: machine shop; maintenance, carpenter shop; hand-pump assembly; water conditioner assembly; centrifugal-pump assembly; deep-well assembly, shallow-well assembly; pitcher-spout assembly; dip paint; spray paint; hand paint; cylinder and leather packaging; water-conditioner packaging, motor and switch assembly; water-system final assembly, delivery; hand-pump final assembly, storage and shipping, engine room and watchmen, receiving, trucking and stockroom; and including employees performing machine shop work in the mill room, but excluding watchmen, janitors, office employees, salesmen, clerical employees, foremen, and other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen among the foundry employees in Unit 1, defined in Section IV, above, be resolved by an election by secret ballot among such employees who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.[10]

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 Red Jacket Manufacturing Company, Davenport, Iowa, 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 Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said

[10] Since we have found that no question concerning representation has arisen with regard to the employees of Unit 2, defined in Section IV, above, we shall not direct an election among them

Rules and Regulations, among the employees in Unit 1, found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this 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 representd by United Farm Equipment and Metal Workers of America, CIO, or by International Molders and Foundry Workers of North America, Local 230, AFL, for the purposes of collective bargaining, or by neither.