

In the Matter of AMERICAN TOBACCO COMPANY, INCORPORATED and AMERICAN SUPPLIERS, INCORPORATED and LOCAL UNION No. 666, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. L.

*Case No. 5-R-1848.—Decided July 10, 1945*

*Messrs. J. R. Tucker and Robert G. Cabell, both of Richmond, Va., for the Companies.*

*Mr. Lawson Wimberly, of Washington, D. C., and Mr. William F. Patrick, of Richmond, Va., for the IBEW.*

*Mr. Angelo J. Fiumara, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by Local Union No. 666, International Brotherhood of Electrical Workers, A. F. L., herein called the IBEW, alleging that a question affecting commerce had arisen concerning the representation of employees of American Tobacco Company, Incorporated, Richmond, Virginia, and American Suppliers, Incorporated,<sup>1</sup> Richmond, Virginia, herein separately called American Tobacco and American Suppliers and collectively called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Marvin C. Wahl, Trial Examiner. Said hearing was held at Richmond, Virginia, on April 16, 1945. The Companies and the IBEW appeared and participated.<sup>2</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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.

<sup>1</sup> The formal papers were amended at the hearing to show the names of the Companies as indicated herein.

<sup>2</sup> International Association of Machinists, A. F. L., was served with notice but failed to intervene. Its representative, however, appeared and testified.

After the hearing, the Companies moved, without objection, that certain corrections be made in the transcript of testimony in this proceeding. The motion is hereby granted.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANIES

American Tobacco Company, Incorporated, a New Jersey corporation with its principal office located in New York City, is engaged in the manufacture and sale of cigarettes and other tobaccos. We are here concerned with American Tobacco's operations at its two factories in Richmond, Virginia, known as the Virginia Branch and the Richmond Branch. American Tobacco purchases approximately 90 percent of its total stock of tobacco from American Suppliers, its subsidiary, whose operations are described below. During the year 1944, 90 percent of the total production of American Tobacco at its Richmond and Virginia Branches, exceeding \$50,000 in value, was shipped outside the State of Virginia.

American Suppliers, Incorporated, a Delaware corporation, is a wholly owned subsidiary of American Tobacco. It purchases, stems, and stores leaf tobacco before it is processed for manufacturing. We are here concerned with its activities at its two plants in Richmond, Virginia, known as the Richmond Division. During the year 1944, its purchases totaled in excess of \$50,000, approximately 90 percent of which was received from points outside the State of Virginia. All its sales were made to American Tobacco Company.

Each of the Companies admits, and we find, that each is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

Local Union No. 666, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

Following a cross-check conducted under the supervision of the Board, the Companies and the International Association of Machinists, A. F. L., herein called the IAM, on March 23, 1943, entered into a contract covering certain employees in the plants here involved to be in effect until December 31, 1943. The recognition clause of the contract states that:

The Companies recognize the above-mentioned Union [IAM] as the sole and exclusive bargaining agency for Machinists, Machinists' Helpers, Electricians, Electricians' Helpers, Carpenters, Carpenters'

Helpers, Pipe Fitters, Pipe Fitters' Helpers, their apprentices, Conveyor Men, and Mechanics in the Cutting Room, *who are employee members of Local Lodge No. 10 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, or who may desire to be represented by the above-mentioned Union* provided any individual employee shall have the right at any time to present a grievance to the Company. (Italics supplied.)

The contract provided for its automatic renewal for yearly terms, subject to defeasance upon written notice given by either party 60 days prior to any expiration date. Neither of the contracting parties gave notice of termination either in 1943 or 1944. On November 28, 1944, about 5 weeks before the expiration date of the contract, the IBEW advised the Companies that it represented a majority of their electrical workers and requested recognition as their exclusive bargaining representative. Several weeks later the Companies refused such recognition, asserting that the existing contract with the IAM constitutes a bar to this proceeding.

The Companies contend that the contract has been understood and treated by the parties as one of exclusive recognition and that since neither contracting party gave notice of termination and inasmuch as the IBEW failed to give notice to its representation claim prior to the effective date of the automatic renewal clause, the contract is now extended to December 31, 1945, and constitutes a bar. The IBEW, on the other hand, maintains that the contract is a "members-only" contract and, therefore, does not preclude an investigation to determine the exclusive bargaining representative of the Companies' electrical workers in an appropriate bargaining unit.

We are unable to agree with the Companies' position. It is well recognized that the language of the contract itself must first be considered in determining its construction.<sup>3</sup> An examination of the contract and particularly the language in the recognition clause itself makes it apparent that the contract is a "members-only" contract since it is limited in coverage to those employees who are "employee members of the [IAM] or who may desire to be represented by the [IAM]." Accordingly, since the contract is a "members-only" contract, we find that the agreement does not constitute a bar to a present determination of representatives.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the IBEW represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</sup>

We find that a question affecting commerce has arisen concerning the

<sup>3</sup> See *Matter of Continental Can Company, Inc.*, 52 N. L. R. B. 710

<sup>4</sup> See *Matter of Continental Can Company, Inc.*, 52 N. L. R. B. 710, see also *Matter of Lever Brothers Company*, 57 N. L. R. B. 139; *Matter of Continental Products, Inc.*, 36 N. L. R. B. 527.

<sup>5</sup> The Field Examiner reported that the IBEW submitted seven authorization cards dated November 29, 1944; and that there are approximately nine employees in the alleged appropriate unit

representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The IBEW seeks a unit composed of all electricians, electricians' helpers, and apprentices at the Companies' plants involved herein, but excluding office and clerical employees, working foremen, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The Companies take no position on the unit issue.

As appears hereinabove, both Companies as a single employer have been dealing with the IAM since 1943 with respect to the employees in the plants here involved. In addition, we note that the operations of these Companies are integrated and that American Suppliers is a totally owned subsidiary of American Tobacco. In view of the foregoing circumstances, we are of the opinion that American Suppliers and American Tobacco constitute a single employer within the meaning of Section 2 (2) of the Act.

The Companies use electrical processes in drying tobacco, and engage the services of electricians in connection with these operations. These electrical workers are admittedly specialists in their field. They also perform maintenance and installation work for the Companies.

We have previously held that electricians such as those here involved constitute a well-defined craft group. In addition, it appears that the IAM has relinquished jurisdiction over the electricians and does not wish or intend to bargain for them at the present time.

Under all the circumstances, we find that all electricians, electricians' helpers, and apprentices at the Virginia Branch and Richmond Branch of American Tobacco and the Richmond Division of American Suppliers, but excluding office and clerical employees, working foremen, and all or any 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.<sup>6</sup>

#### 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 herein, subject to the limitations and additions set forth in the Direction.<sup>7</sup>

<sup>6</sup> See *Matter of Western Electric Company, Incorporated*, 61 N. L. R. B. 974.

<sup>7</sup> The IBEW's request that it be designated on the ballot as "Local Union No 666, I. B. E. W.," is hereby referred to the Regional Director for determination.

## 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 American Tobacco Company, Incorporated, Richmond, Virginia, and American Suppliers, Incorporated, Richmond, Virginia, 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 Fifth 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 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 any 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 or not they desire to be represented by Local Union No. 666, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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