

In the Matter of THE UNION FORK & HOE COMPANY and THE CABLE
GUILD INDEPENDENT UNION

Case No. 3-R-978.—Decided August 8, 1945

Mr. Warnick J. Kernan, of Utica, N. Y., for the Company.

Mr. Peter J. Crotty, of Buffalo, N. Y., for the Independent.

Mr. H. I. Smith, of Buffalo, N. Y., for the A. F. L.

Mr. Harold M. Humphreys, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by The Cable Guild Independent Union, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of The Union Fork & Hoe Company, Rome, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene Von Wellshem, Trial Examiner. Said hearing was held at Rome, New York, on May 25, 1945. The Company, the Independent, and Fort Stanwix Lodge 1512, International Association of Machinists, AFL,¹ herein called the A. F. L., appeared and participated. 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 the A. F. L. moved to dismiss the petition and the Trial Examiner referred the motion to the Board for determination. For reasons set forth in Section III, *infra*, the motion is 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Union Fork & Hoe Company, an Ohio corporation, operates a plant at Rome, New York, where it is engaged in the manufacture of

¹ This appears to be the correct designation of the intervening labor organization.

war ordnance items, such as boosters, fuses, and bayonets. During the year 1944, the Company consumed raw materials amounting in value to more than \$920,000, of which in excess of 30 percent was shipped to the Company from points outside the State of New York. For the same period, the total value of the products finished at the Rome plant was in excess of \$4,030,000, of which more than 60 percent was shipped to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

The Cable Guild Independent Union, unaffiliated, is a labor organization admitting to membership employees of the Company.

Fort Stanwix Local 1512, International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing the Company refused to grant recognition to the Independent as the exclusive bargaining representative of certain of its employees.²

On March 4, 1942, after a consent cross-check held under Board auspices, the A. F. L. was designated by the Regional Director as the collective bargaining representative of the Company's employees in the unit hereinafter found appropriate.³ In 1944 a contract containing a maintenance-of-membership clause was executed between the Company and the A. F. L. which provided that it was to remain in effect "from April 14, 1944 to April 13, 1945, and thereafter from year to year unless, 30 days prior to any expiration date, either party shall have given to the other notice in writing, of the changes which they desire to negotiate." Negotiations concerning changes in the agreement took place between the contracting parties in March and April 1945, and on April 11 they signed a written contract extending the terms of their 1944 agreement until "negotiations are satisfactorily completed." On April 12, 1945, the Independent filed the original petition herein.⁴

Plainly, a current determination of representatives is not precluded, for the automatic renewal of the 1944 contract for another year certain was forestalled by the negotiations of the contracting parties in March

² Despite the A. F. L.'s contrary assertion, we find that the Independent's failure to demand recognition from the Company prior to the filing of the original petition herein is not fatal to the instant proceeding. See *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. L. R. B. 184.

³ Case No. 3-R-367.

⁴ On May 3, 1945, the amended petition was filed.

and April 1945, and their execution of the extension agreement of April 11.⁵ Nor can the extension agreement be relied upon to bar the instant proceeding, since it merely transformed the 1944 contract into one of indefinite duration.⁶ While the A. F. L. also calls attention to the fact that it was in the midst of negotiating a new contract with the Company when the Independent filed the original petition, no final understanding had been reduced to writing and signed by the A. F. L. and the Company at that time.⁷

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Independent represents a substantial number of employees in the unit hereinafter found appropriate.⁸

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 substantial accordance with the agreement of the parties and based upon the entire record, that all employees of the Company employed at its Rome, New York, plant, excluding clerical employees, guards, watchmen, and all 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.

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.

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,

⁵ See *Matter of American Woolen Company*, 57 N. L. R. B. 647, and *Matter of Purepac Corporation & Klingmoth Chemical Corporation*, 55 N. L. R. B. 1386.

⁶ See *Matter of General Electric Company*, 48 N. L. R. B. 1044.

⁷ See *Matter of Elicor, Inc.*, 46 N. L. R. B. 1035.

⁸ The Field Examiner reported that the Independent submitted 127 authorization cards; that the names of 115 persons appearing on the cards were listed on the Company's pay roll of April 7, 1945, which contained the names of 471 employees in the alleged appropriate unit. The A. F. L. relies upon its contract as evidence of interest. In view of the maintenance of membership provision in the contract between the Company and the A. F. L., we find the Independent's showing to be substantial. See *Matter of The Champion Machine & Forging Company*, 53 N. L. R. B. 934.

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 The Union Fork & Hoe Company, Rome, New York, 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 Third 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 the 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 The Cable Guild Independent Union, or by Fort Stanwix Lodge 1512, International Association of Machinists, AFL, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.