

In the Matter of LAC CHEMICALS, INC. and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, WAREHOUSE & DISTRIBUTION WORKERS UNION, LOCAL 26, C. I. O., AND OTHER UNIONS

Case No. 21-RE-21.—Decided August 13, 1945

Mr. J. E. Simpson, of Los Angeles, Calif., and *Mr. Lewis A. Crank*, of Culver City, Calif., for the Company.

Mr. Jack Steinhart, of Los Angeles, Calif., for the C. I. O.

Messrs. David Sokol and *Ralph Woolpert*, both of Los Angeles, Calif., for the A. F. L.

Mr. Arthur LeRoy Meadows, of Venice, Calif., for Employees Group.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Lac Chemicals, Inc., Culver City, California, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before William T. Whitsett, Trial Examiner. Said hearing was held at Los Angeles, California, on May 23, 1945. The Company, International Longshoremen's and Warehousemen's Union, Warehouse & Distribution Workers Union, Local 26, C. I. O., herein called the C. I. O., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, Grocery Warehousemen, A. F. L., herein called the A. F. L., 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. 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 Employees Group was served with notice, appeared through its representative, but did not intervene. The representative stated that the Employees Group does not claim to be a labor organization and therefore does not wish to participate in any election which the Board may direct herein.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Lac Chemicals, Inc., a California corporation with its principal office located at Culver City, California, is engaged in the manufacture and distribution of industrial alcohol. During the year ending June 30, 1944, the Company purchased raw materials valued at approximately \$350,000, consisting of molasses, steel containers, wood alcohol, and denaturants. The molasses, which was purchased from the Pacific Molasses Company, Ltd., f. o. b. San Pedro, California, amounted in value to approximately \$250,000, and originated in the Hawaiian Islands. The wood alcohol and denaturants, together valued at approximately \$28,500, were shipped to the Company from points outside the State of California. During the same period, the Company sold approximately 16 percent or about \$116,000, worth of its finished products f. o. b. Los Angeles and San Francisco to the United States Government and private industries for shipment to points outside the State. At the present time, about 90 percent of the Company's sales is made to customers who take delivery at the plant at Culver City, and the remaining 10 percent is being shipped by the Company to purchasers outside the State of California.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Longshoremen's and Warehousemen's Union, Warehouse & Distribution Workers Union, Local 26, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, Grocery Warehousemen, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

About February 15, 1945, the A. F. L. requested recognition of the Company as the exclusive collective bargaining agency of certain of its employees. At a conference held about March 9, 1945, the Company advised the A. F. L. that the C. I. O. was the collective bargaining agency until the Board decides otherwise. On April 19, 1945, the Company filed the petition herein.

On November 13, 1942, the Board certified the C. I. O. as the collective bargaining agency of the Company's employees as a result of a Board ordered election.² Due to inability to reach an agreement in the ensuing negotiations, the matters in dispute between the parties were referred to the War Labor Board on December 24, 1942. On February 8 and 9, 1943, the Company and the C. I. O. orally agreed before a War Labor Board referee as to certain terms³ of a collective bargaining contract. There remained in dispute, however, issues relating to vacations, hours of employment, grievance procedure, wages, union shop, check-off, and sick leave. On November 27, 1943, the Regional War Labor Board issued its Order on these disputed issues. The C. I. O., thereafter, on December 11, 1943, petitioned for a review of this Order only as to check-off and sick leave benefits. The National War Labor Board denied the C. I. O.'s petition on July 19, 1944. It appears that the parties did not learn of this action until about May 9, 1945, several weeks after the C. I. O.'s petition of April 17, 1945 to the War Labor Board for an interim order requiring the parties to incorporate the undisputed parts of the November 7, 1943 Order into a written contract. Proceedings are still pending before the War Labor Board.

The Company adduced uncontradicted testimony showing that it has substantially complied with the terms agreed upon at the hearing before the referee and with those contained in the Regional War Labor Board Order⁴ from early 1943 to the date of the filing of the petition herein, and that the employees have had substantial benefits as a result.

The record shows that in the latter part of 1943, the C. I. O. submitted to the Company, pursuant to the Regional War Labor Board Order, a list of employees whose membership was in good standing and that it did not thereafter deal with the Company in any manner until about May 1944. At that time it signed an application for wage increases to be filed with the War Labor Board. It also appears that, although there have been few grievances among the employees, the C. I. O. did not participate in their settlement. Since July 1944, there have been no stewards in the plant nor any meetings of employees belonging to the C. I. O. For the past 8 months no employee has paid dues to the C. I. O. Indeed, on or about March 15, 1945, the C. I. O., for the first time, submitted to the Company a proposed contract together with a written demand that the Company discharge certain delinquent employees pursuant to the terms of the Regional War Labor Board Order of November 27, 1943.

² See *Matter of Lac Chemicals, Inc.*, 44 N. L. R. B. 1196.

³ The parties were in accord as to union recognition, holidays, seniority, draftees, leaves of absence, transfers at work, discharges, minimums, bulletin boards, strikes and lockouts, privileges of business agents, a length of agreement clause, and employee coverage.

⁴ Although the Order was issued on November 27, 1943, it was given retroactive effect to about January 1, 1943.

The C. I. O. contends, in effect, that the proceedings before the War Labor Board bar a present determination of representatives since an election, if now directed, would penalize it for unavoidable delay consequent upon its acceptance of the orderly procedures established by governmental authority for the adjustment of its differences with the Company, and would prevent it from executing a complete and final contract with the Company. We find no merit in this contention. The mere pendency of a dispute before a governmental agency or the mere fact that the execution of a complete contract between a newly certified bargaining representative and the employer has been delayed by submission of disputed issues to such governmental agency, in itself, does not necessarily bar an investigation of representatives.⁵

Where, as here, the delay has been due in large part to the bargaining representative's own neglect or delay rather than to the proceedings before the governmental agency, we will not postpone a determination of representatives.⁶ Thus, it is clear that between December 1943 and sometime in March 1945, the C. I. O. was lacking in due diligence in the prosecution of its case before the War Labor Board, and, significantly, its renewed activity in March 1945 followed shortly after the A. F. L. had made its rival representation claim.⁷ In addition, we have held that such proceedings will not bar an election where the exclusive bargaining representative has had an opportunity to obtain substantial benefits for the employees.⁸ The facts of the instant case establish that the C. I. O. has had opportunity to, and has obtained, such benefits. We also note that more than 2½ years have elapsed since the C. I. O. was certified as the exclusive bargaining representative. Under all the circumstances and on the entire record of the case, we are of the opinion that the policies of the Act can best be effectuated by affording the employees herein an opportunity to express their desires as to representation in an election by secret ballot.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit hereinafter found appropriate.⁹

⁵ See *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Matter of Diamond Magnesium Company*, 57 N. L. R. B. 393. Cf. *Matter of Taylor Forge & Pipe Works*, 58 N. L. R. B. 1375.

⁶ See *Matter of West Virginia Pulp & Paper Company*, 61 N. L. R. B. 438.

⁷ It is apparent that the C. I. O. had, in many respects, failed to function as a representative of the Company's employees ever since December 1943, and that the C. I. O. was not forced into such inactivity by reason of its resort to the procedures of the War Labor Board.

⁸ See *Matter of Great Lakes Carbon Corporation*, 57 N. L. R. B. 115.

⁹ The Field Examiner reported that the A. F. L. submitted 10 application cards; that the names of 8 persons appearing on the cards were listed on the Company's pay roll of April 22, 1945, which contained the names of 18 employees in the appropriate unit; and that the cards were dated between February and April 1945. The C. I. O. relies upon its previous Board certification and its past negotiations with the Company to show its interest in this proceeding.

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 agreement of the parties, that all employees of Lac Chemicals, Inc., Culver City, California, including the foremen of the warehouse denaturing plant and the foremen of the fermentation department, but excluding the shipping and receiving clerk, office employees, one employee who keeps records of the Company's government business, the chemist, the plant superintendent, 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.¹⁰

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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.¹¹ Since the C. I. O. stated at the hearing that it does not desire to participate in any election that may be directed, we shall not accord the C. I. O. a place on the ballot.

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 which Lac Chemicals, Inc., Culver City, California, 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 Twenty-first 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

¹⁰ This is the same unit found appropriate by the Board in a prior decision. (See footnote 2, *supra*)

¹¹ The A. F. L.'s request that it be designated on the ballot as "Grocery Warehousemen's Local 595, A. F. L." is hereby referred to the Regional Director for determination.

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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, Grocery Warehousemen, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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