

In the Matter of ROBERT GAIR COMPANY, INC. (TONAWANDA BOXBOARDS DIVISION) and INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, A. F. OF L.

Case No. 3-R-1053.—Decided October 10, 1945

Messrs. Rathbone, Perry, Kelley & Drye, by *Messrs. T. R. Iserman* and *R. T. Clarke*, both of New York City, for the Company.

Messrs. J. Griffin McKierman and *R. A. Day*, both of Albany, N. Y., for the A. F. L.

Messrs. Joseph Lovas and *Michael Klune*, both of Buffalo, N. Y., for the C. I. O.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Paper Makers, A. F. of L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Robert Gair Company, Inc., Tonawanda, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene Von Wellshheim, Trial Examiner. Said hearing was held at Buffalo, New York, on August 7, 1945. The Company, the A. F. L., and Paper Workers Organizing Committee, Local 137, C. I. O., herein called the C. I. O., 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. 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

Robert Gair Company, Inc. (Tonawanda Boxboards Division), is a Delaware corporation licensed to conduct business in the State of
64 N L R. B., No. 1.

New York. It is engaged at its Tonawanda, New York, plant, with which we are concerned herein, in the production of boxboard. Between June 1, 1944, and June 30, 1945, the Company used at its Tonawanda plant raw materials valued in excess of \$2,400,000, of which more than 20 percent represents shipments from points outside the State of New York. During the same period, the Company manufactured at said plant finished products valued in excess of \$3,450,000, of which more than 30 percent represents shipments to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Paper Makers, affiliated with the American Federation of Labor, and Paper Workers Organizing Committee, Local 137, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

By telegram dated June 29, 1945, the A. F. L. requested recognition from the Company as the representative of certain of its employees. Subsequently, the Company refused such recognition until the A. F. L. had been certified by the Board.

On May 10, 1944, the Company and the C. I. O., which was then the duly certified representative of the Company's employees at its Tonawanda plant, executed a collective bargaining agreement covering these employees, and containing the following termination clause:

This agreement . . . shall continue in full force and effect until May 10, 1945, and from year to year thereafter unless thirty (30) days before any expiration date notice to amend or terminate is given by either party to the other, in which event the agreement shall terminate on such expiration date . . .

By letter dated April 30, 1945, 20 days after the effective date of the automatic renewal clause, the C. I. O. requested that the Company meet with it for the purpose of negotiating changes in the above agreement. The Company replied by letter dated May 2, in which it referred to the above-cited clause, and took the position that the proposed conference was not in order inasmuch as the contract had been automatically renewed pursuant thereto. On May 5, the C. I. O. in a letter again requested a bargaining conference with the Company, stating in effect, that the failure to give proper notice was merely an oversight, and requesting that the Company reconsider and waive this "technicality." In an answer dated May 7, the Company refused.

On June 18, the C. I. O. forwarded its proposed contract changes to the Company, apparently in accordance with a request from it. Six days later, by letter dated June 24, the Company replied, stating, "Our contract is not open for the negotiations or amendments and . . . we do not contemplate opening it for such negotiations at this time." However, in this letter the Company agreed that it would enter into discussions with the C. I. O. concerning "functional rates," if such discussions were "not taken as opening the contract or as a waiver by the Company or the Union of any of their respective rights under the contract . . ." On June 26, the C. I. O. agreed by letter to enter into such discussions, and asked for the Company's definition of "functional duties and rates." The Company answered on June 30, setting July 11 as a date for these discussions. On July 3, the C. I. O. suggested July 16 as the meeting date. Three days later the Company, by letter, postponed the meeting for an indefinite period. On June 10, the C. I. O. submitted to the Company its proposed wage changes. The Company replied by letter, dated July 12, characterizing the C. I. O.'s proposals as "extravagant," and postponing all discussion until the termination of the instant proceeding, which had been initiated by a petition filed on July 5, 1945.

The C. I. O. contends that its contract dated May 10, 1944, has been automatically renewed and constitutes a bar to this proceeding, inasmuch as the A. F. L. gave the Company notice of its claim to representation after such automatic renewal. The Company asserts that the contract is still in effect; it does not specifically contend that the agreement constitutes a bar, but it maintains that the terms of the contract are binding upon the employees of the Tonawanda plant, regardless of which organization represents them. The A. F. L. contends, in effect, that the correspondence above set forth is evidence of the fact that the Company and the C. I. O. terminated the contract, thus permitting the entertainment of its petition.

From the foregoing facts, it is apparent that the C. I. O.'s demands for modification of the contract were made in untimely fashion and that the automatic renewal clause had already taken effect. Its attempts to induce the Company to waive this "technicality" were unsuccessful, the Company having persisted in taking the position that the contract had been renewed until May 10, 1946. This situation was not altered by the Company's willingness, as late as June 1945, to review the C. I. O.'s proposed changes and, ultimately, to discuss "functional rates," for it was understood by the contracting parties that the agreement was to continue in operation. This understanding, in the circumstances, was tantamount to a clause permitting an adjustment of wages during the life of the contract, and any dealings had pursuant thereto did not terminate the agree-

ment.¹ Accordingly, we find that the agreement between the Company and the C. I. O., as automatically renewed on April 10, 1945, precludes a present determination of representatives.² We shall dismiss the petition herein, but without prejudice to the right of A. F. L. to file a new petition a reasonable time prior to the next automatic renewal date of the contract.

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Robert Gair Company, Inc. (Tonawanda Boxboards Division), Tonawanda, New York, filed by International Brotherhood of Paper Makers, A. F. of L., be, and it hereby is, dismissed.

¹ See *Matter of Story and Clark Piano Co*, 59 N. L. R. B. 185; see also *Matter of Green Bay Drop Forge Company*, 57 N. L. R. B. 1417.

² See *Matter of Marvel-Schebler Division, Borg-Warner Corporation*, 56 N. L. R. B. 105; see also *Matter of Mill B, Inc., et al*, 40 N. L. R. B. 346.