

In the Matter of ROUND CALIFORNIA CHAIN CORPORATION, LTD. and
UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 20-R-1298.—Decided October 15, 1945

Mr. B. J. Feigenbaum, of San Francisco, Calif., for the Company.

Mr. J. H. Sapiro, of San Francisco, Calif., and Mr. Leo J. Oberhaus,
of Oakland, Calif., for the C. I. O.

Mr. Charles J. Janigian, of San Francisco, Calif., and Mr. A. C.
Brunel, of Oakland, Calif., for the A. F. of L.

Mr. John E. Lawyer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Round California Chain Corporation, Ltd., South San Francisco, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John Paul Jennings, Trial Examiner. Said hearing was held at San Francisco, California, on June 29, 1945. At the commencement of the hearing, the Trial Examiner granted a motion of International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Local No. 168, A. F. of L., herein called the A. F. of L., to intervene. The Company, the C. I. O., and the A. F. of L. appeared at and participated in the hearing, and 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 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

Round California Chain Corporation, Ltd., a California corporation, has a plant at South San Francisco, California, where it is
64 N. L. R. B., No. 41.

engaged in the fabrication of chain and related products. During the year 1944, the volume of sales of the Company was in excess of \$100,000, of which 45 percent was shipped to points outside the State of California.

We find, and the Company does not deny, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, and International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Local No. 168, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

For approximately 6 years the Company and the A. F. of L. have been parties to collective bargaining agreements. The last contract, and the one in dispute, was entered into on June 23, 1943. It provides in part as follows:

This agreement will become effective March 1, 1943 and shall remain in effect until December 31, 1944, unless changed by mutual consent. It is understood that wage rates only may be opened on December 31, 1943, by either side on thirty (30) days written notice, prior thereto. If an agreement has not been reached by January 31, 1944, it shall be submitted for review and recommendation by impartial parties. Should either party desire to change, modify, or terminate the agreement, written notice thereof must be given to the other party (30) thirty days prior to December 31, 1944. If such notice is not given within such time, the agreement shall be considered as automatically renewed for an additional period of one year, and in like manner from year to year thereafter.

On November 27, 1944, the A. F. of L. addressed a letter to the Company stating that it desired "an informal conference to discuss conditions and adjustments of certain wages," adding that "This letter does not open, nullify, nor void the contract, and it remains in full force and effect." By mutual agreement the parties did not meet until January 12, 1945.

During the January 12 meeting, which, so far as the record reveals, was confined to the correction of the wage rate relating to the production of BBB type chain for which the Company had recently been awarded a contract, the parties reached an agreement on the correct rate, subject to the approval of the superiors of the Company's manager, who had participated in the discussion. On January 23, 1945,

after such approval had been obtained, a second meeting was held and the parties agreed to file an application with the War Labor Board requesting permission to make the rate correction. The A. F. of L. called a third meeting with the Company on January 29, 1945, to see if the application was ready for signature. While not ready at this time it was subsequently completed and signed on January 31, 1945. War Labor Board approval of the application was received on March 10, 1945, and the correction, affecting three or four employees, was made. Production of the BBB type chain was started in 2 or 3 weeks thereafter.

In the meantime, on January 26, 1945, the C. I. O. filed its petition with the Board and mailed a letter to the Company requesting recognition. The letter was received the following Monday, January 29, 1945, and the Company refused to recognize the C. I. O. because of its contract with the A. F. of L.

In its brief, the C. I. O. asserts, in substance, that the letter sent by the A. F. of L. on November 27, 1944, was the notice contemplated by the provisions of the contract's termination clause and, therefore, despite the limitations that only "conditions and adjustments of certain wages" were to be discussed and this should not have the effect of ending the agreement; that the automatic renewal of the contract was forestalled.

Both the Company and the A. F. of L. contend, however, that the contract was renewed because the adjustment of the one rate was the correction of a typographical error of long standing which had not been previously discovered because as the particular type of chain to be produced under the Company's recently awarded contract was seldom used, and in normal times was a "dead item"; and that the error was brought to light by reason of the award of the contract to the Company for this particular type of chain.

The claim of error is supported by reference to the contract between the parties which shows a variance in rate for all other types of chain in the range between $\frac{7}{8}$ of an inch and 1 inch, depending on size, while the rate for BBB type, the type required by the contract, is not varied in this size range. Further, the application to the War Labor Board was in the nature of a request to correct the error, and this was the only change made or requested in the wage rates that have been in effect since January 1941. Upon all the facts we are not persuaded that the letter of November 27, 1944, and the subsequent negotiations affecting a minor correction in the contract, were of such a character as to forestall the automatic renewal of the contract.¹

¹ Although the introductory clause of the contract indicates that it is between the Company and its employees who are members of the A. F. of L., Section 3 accords recognition to the A. F. of L. as "the sole collective bargaining agent for all hourly paid or piece rate employees." In these circumstances, we are not persuaded that the contract is of the "members only" type.

However, since the contract will expire by its terms less than 3 months from the present time unless renewed by the failure of either party to give the requisite 30 days' notice, we find that the contract is not a bar to a present determination of representatives.² But any certification which we may issue as a result of an election shall be for the limited purpose of designating a representative to negotiate an agreement to succeed the contract expiring December 31, 1945, now in effect.³

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 hereinafter found appropriate.⁴

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 the Company engaged in operations in and about its plant at South San Francisco, California, excluding truck drivers, office and clerical employees, 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 means of 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, 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 representa-

² See *Matter of Chrysler Motors Parts Corporation*, 38 N. L. R. B. 1379.

³ See *Matter of Chrysler Motor Parts Corporation*, *supra*; *Matter of The Flintkote Company*, 55 N. L. R. B. 1442.

⁴ The Board agent reported that the C. I. O. submitted 13 authorization cards bearing the names of persons appearing on the pay roll for January 26, 1945. The A. F. of L. relies upon its contract for its interest in the proceeding. At the time of the hearing there were approximately 15 employees in the appropriate unit.

tives for the purposes of collective bargaining with Round California Chain Corporation, Ltd., South San Francisco, 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 Twentieth 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 they desire to be represented by United Steelworkers of America, C. I. O., or by International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Local No. 168, A. F. of L., 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.