

In the Matter of GAYLORD BROS., INC. and CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 3-R-1068.—Decided December 11, 1945

Fraser Brothers, by *Mr. Henry S. Fraser*, of Syracuse, N. Y., for the Company.

Mr. John J. Maurillo, of Syracuse, N. Y., for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Gaylord Bros., Inc., Syracuse, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene Von Wellsheim, Trial Examiner. The hearing was held at Syracuse, New York, on August 31 and September 1, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner reserved for the Board a motion by the Company to dismiss the present proceeding.¹ The motion is denied for reasons hereinafter stated. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Subsequent to the hearing, the Company filed a motion to correct the transcript of testimony in certain particulars. The Union thereafter filed objections thereto. Inasmuch as the corrections sought are not substantial and would have no effect upon the decision in the instant proceeding, the Company's motion is hereby granted.

¹ The Company's motion to dismiss is predicated on the following grounds: (1) that the Company has been denied due process of law under the Fifth Amendment to the Constitution of the United States; (2) that the Board is without jurisdiction because no question concerning representation has arisen under the National Labor Relations Act.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Gaylord Bros., Inc., a New York corporation, conducts manufacturing operations at Syracuse, New York, where it is engaged in the manufacture of library furniture and supplies. During the calendar year 1944, the Company used in its Syracuse operations raw materials valued in excess of \$150,000, of which more than 50 percent was obtained from points outside the State of New York. During the same period, the Company manufactured finished products valued in excess of \$200,000, of which more than 50 percent represents shipments 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 ORGANIZATION INVOLVED

Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.²

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing over the objection of the Company, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

² The Company's contention that the Union is not a labor organization within the meaning of the Act is without merit. See *Matter of Lone Star Cement Corporation*, 60 N. L. R. B. 1135

³ The Board agent reported that the Union had submitted 25 authorization cards dated August 1945 from among a total of approximately 35 employees in the claimed appropriate unit.

Upon the grounds that the report of the Board agent was hearsay and that no opportunity had been afforded it to cross-examine the Board agent with respect to the authorization cards aforesaid, the Company objected to the admission in evidence of the Board agent's report and also moved to dismiss the Union's petition. In support of its objection and motion to dismiss, the Company contends that the admission into evidence of the Board agent's report on authorizations without affording the Company an opportunity to inspect the authorization cards or cross-examine the Board agent with respect thereto, is a denial of due process of law as guaranteed by the Fifth Amendment to the Constitution. We find no merit in this contention. As we have frequently stated, the report of a Board agent with respect to a claim of authorization for the purposes of representation is taken not as proof of the precise number of employees who desire to be represented by a labor organization, but rather to protect the Company and the Board from unfounded claims by such organizations and to give reasonable assurance that a substantial number of employees desire to be represented. See *Matter of Syracuse Chilled Plow Co, Inc*, 61

The Company, in moving to dismiss the present proceeding, also contends that no question concerning representation exists upon the ground that no *prima facie* showing has been made that a majority of the employees concerned, in fact, have authorized the Union to represent them in collective bargaining with the Company, a condition allegedly precedent to exercise of jurisdiction by the Board. The contention is without merit. While the Board has, for administrative purposes and to protect the Board's procedure from abuse by the filing of unfounded representation proceedings, generally insisted upon a showing of substantial representation as indicated by an informal check of employee authorizations,⁴ there is nothing in the Act which requires action by a majority of the employees concerned as a condition precedent to the Board's exercise of power to investigate and direct an election for the determination of representatives.⁵ As we have pointed out in numerous decisions, it is sufficient proof of the existence of a question concerning representation that the Company concerned has, on or before the date of the hearing, refused to recognize the petitioning union as exclusive bargaining representative for certain of its employees in a claimed appropriate unit.⁶

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

The Union seeks a unit of production and maintenance employees at the Company's furniture division, one of two factories within the limits of the city of Syracuse, excluding therefrom office and clerical employees, the superintendent, assistant superintendent, and foremen. The Company, which has no history of collective bargaining, takes the position that, due to the integration of operations and the similarity of working conditions between its furniture and supply divisions, only a unit comprised of both is appropriate. The Company, is, however, otherwise in agreement with the Union with respect to the exclusions requested by the Union.⁷

The two divisions are separated by a distance of 3 or 4 city blocks. The supply division manufactures library supplies including small

N. L. R. B. 717, and cases cited therein. See also *Inland Empire District Council, etc. v. Millis, et al*, 65 Supreme Court 1316.

⁴ See footnote 3, *supra*.

⁵ See *Matter of Petersen & Lytle*, 60 N. L. R. B. 1070. See also *Beebe Corp v. Millis, et al*, 58 Fed. Sup. 993 (decided January 12, 1945). The Board has, consistent with this principle, held that the mere absence of specific evidence of representation does not constitute grounds for objection by an employer. See *Matter of Allen and Sandilands Packing Company*, 59 N. L. R. B. 724; *Matter of Arena Norton Co*, 60 N. L. R. B. 1166.

⁶ See *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. L. R. B. 184; *Matter of Crown Zellerbach Corporation, Seattle Division*, 54 N. L. R. B. 25, and cases cited therein.

⁷ The Company would also exclude from its proposed unit cafeteria employees who are found only at the supply division.

metal items, binders and paper products, such as cards and library forms. The furniture division manufactures principally library furniture, such as desks, bookshelves, and chairs of all types. Although the vice president and general manager of the Company, with respect to over-all policy, has jurisdiction over both divisions, the employees of each are under the immediate supervision of a superintendent who has substantial independent authority, including the right to employ and discharge employees. The record also reveals that there is a substantial difference between the average hourly wage rates paid to the employees of the furniture and supply divisions, respectively; that the employees in the several divisions work different hours and apparently have little opportunity for social intercourse with one another;⁸ that grievances arising in either division are generally settled in that division; that each division produces substantially a different and distinct product;⁹ and that, notwithstanding a limited amount of temporary interchange of employees between the two divisions, the great majority of the employees of each division normally remain at the division to which they are specifically assigned. Moreover, the Union has made no attempt to organize any but the furniture division employees. In view of the physical and organizational separation of the divisions, the absence of any substantial amount of interchange of employees between them, and the limited extent of organization, we are of the opinion that the employees of the furniture division alone constitute an appropriate unit.¹⁰

We find that all production and maintenance employees of the Company at its Syracuse, New York, furniture division, excluding office and clerical employees, the superintendent, assistant superintendent, foremen, and all 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.

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

⁸ The employees of the furniture division although privileged to do so, almost never patronize the employees' cafeteria at the supply division because of the distance between the two factories.

⁹ However, in some instances, small parts are made at one division and used in the completion of the finished product at the other division.

¹⁰ See *Matter of Dixie Manufacturing Company, Inc.*, 54 N. L. R. B. 384; *Matter of Hanfin Manufacturing Company*, 61 N. L. R. B. 965, *Matter of Lyon Metal Products, Incorporated*, 62 N. L. R. B. 1350; *Matter of Uhlman Elevators Company of Texas*, 64 N. L. R. B. 1068.

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 representatives for the purposes of collective bargaining with Gaylord Bros., Inc., Syracuse, New York, an election by secret ballot shall be conducted as early as possible but not later than sixty (60) 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 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 the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.