

In the Matter of LORD MANUFACTURING COMPANY and UNITED RUBBER  
WORKERS OF AMERICA, CIO

*Case No. 6-R-983.—Decided March 13, 1946*

*Messrs. W. Pitt Gifford and Thomas Lord*, both of Erie, Pa., for the Company.

*Messrs. Robert E. Shuff and Carl A. Swartz*, both of Erie, Pa., for the CIO.

*Messrs. Fred N. Lovejoy and Gordon E. Winchell*, both of Erie, Pa., for the LEA.

*Mr. A. G. Skundor*, of Pittsburgh, Pa., and *Messrs. Robert A. Warner and W. D. Dunlavey*, of Erie, Pa., for the AFL.

*Mr. Herbert C. Kane*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Rubber Workers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Lord Manufacturing Company, Erie, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Trial Examiner. Said hearing was held at Erie, Pennsylvania, on November 20, 1944. The Company, the CIO,<sup>1</sup> the American Federation of Labor, appearing on behalf of itself and the International Association of Machinists and the International Brotherhood of Firemen and Oilers, herein collectively called the AFL, and Lord Employees Association, herein called the LEA, appeared and participated.<sup>2</sup> On January 15, 1946, pursuant to an order of the Board, a further hearing upon due notice was held at Erie, Pennsylvania, before W. C.

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<sup>1</sup>The CIO waived the right to protest any election held as a result of this proceeding on the basis of the charges of unfair labor practices filed by it in Case No. 6-C-915.

<sup>2</sup>At this hearing the Trial Examiner granted the motion of the AFL and LEA to intervene

Stuart Sherman, Trial Examiner. The Company,<sup>3</sup> the CIO, and the LEA appeared and participated.<sup>4</sup> 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 Examiners' rulings made at the hearings 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

Lord Manufacturing Company, a Pennsylvania corporation, is engaged at its Erie, Pennsylvania, plant in the manufacture, sale, and distribution of anti-vibration mountings and similar products. The principal raw materials used by the Company are steel, aluminum, and monel. During the period from September 10, 1945, through December 31, 1945, the Company purchased raw materials and other items valued in excess of \$600,000, of which approximately 18 percent represented purchases from sources outside the Commonwealth of Pennsylvania. During the same period the Company manufactured, sold, and handled products of a value in excess of \$600,000, of which approximately 90 percent represented shipments to points outside the Commonwealth.

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

### II. THE ORGANIZATIONS INVOLVED

United Rubber Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Lord Employees Association is an unaffiliated labor organization admitting to membership employees of the Company.

<sup>3</sup> At the time of the original hearing the Company's plant was in the control and possession of the United States Navy, and for that reason the Company appeared specially to contest its status as an employer under Section 2 (2) of the Act. However, by the time of the further hearing, the United States Navy had returned the premises to the control of the Company and the Company appeared generally.

<sup>4</sup> Although served with notice of further hearing, the AFL did not appear at the further hearing. Moreover, by the time of the reopened hearing the International Association of Machinists and the International Brotherhood of Firemen and Oilers had forwarded to the Board's Regional Office requests for the withdrawal of their interventions which we hereby grant.

## III. THE QUESTION CONCERNING REPRESENTATION

On May 25, 1943, as a result of a Board directed election,<sup>5</sup> the LEA was certified as the exclusive bargaining representative of the production and maintenance employees of the Company. Thereafter, on July 22, 1943, the Company and the LEA entered into a contract covering these employees for an initial period of 1 year ending July 22, 1944. The contract provided further that it would continue in full force and effect from year to year thereafter, in the absence of notice by either party, at least 30 days before the anniversary date, of a desire to terminate or modify the contract. By letter dated June 17, 1944, the CIO requested a collective bargaining conference with the Company, asserting that it represented a substantial number of the Company's employees. The Company, by letter dated June 20, 1944, replied that it was under contract with the LEA and that it refused to recognize the CIO. On June 20, 1944, the CIO filed its petition with the Board.

At the reopened hearing the Company urged the contract between it and the LEA as a bar to a present determination of representatives on the ground that it had been automatically renewed in 1944 and 1945, and was, therefore, in effect until July 22, 1946. In support of its position, the Company argues that the letter of June 17, 1944, in which the CIO alleged that it represented a substantial number of the Company's employees, was not sufficient to put the Company on notice of the CIO's rival claim, in that it did not allege that the CIO represented a majority of the employees in the appropriate unit. We do not agree. In our opinion, the letter of June 17, 1944, was sufficient to put the Company on notice that the contracting union had an active rival and to preclude the Company from effectively barring that rival union by renewing its agreement with the contracting union.<sup>6</sup> Moreover, the fact that the petition was filed 2 days before the effective automatic renewal notice date, in itself, precludes the creation of a bar. Accordingly, we find that the contract between the Company and the LEA does not prevent a current determination of representatives.

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.<sup>7</sup>

<sup>5</sup> 49 N. L. R. B. 278.

<sup>6</sup> See *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560.

<sup>7</sup> At the reopened hearing the Trial Examiner reported that the CIO submitted 169 authorization cards; that 168 of these cards appeared to have genuine, original signatures; and that a spot check of 100 of the cards against the Company's January 6, 1946, pay roll revealed that 99 of these cards bore the names of persons listed on that pay roll. There are approximately 370 employees in the appropriate unit. The LEA, in addition to relying on its contract with the Company as evidence of its interest, submitted 83 application-for-membership cards to the Trial Examiner. Seventy-five of

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 accord with the agreement of the parties, that all production and maintenance employees of the Company at its Erie, Pennsylvania, plant, including time clerks who work throughout the plant, nonmonitorial guards and watchmen,<sup>8</sup> and non-professional laboratory employees, but excluding foremen, assistant foremen, professional technical, office and clerical employees, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes at 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

The Company contends that no election should be directed at this time because (1) the unit has not reached its maximum strength and (2) the Company does not have a sufficiently stable and representative group of employees to warrant an election. The record shows that approximately 2 weeks after September 10, 1945, the date when the United States Navy relinquished control and possession of the plant involved herein, the Company, in order to fill a backlog of orders, resumed production. By September 30, 1945, the Company had 238 production and maintenance employees, and by December 31, 1945, the Company's complement of such employees reached about 375, a level which it has since maintained. The Company contemplates that its full complement will be between 1,500 and 2,000 pro-

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these cards bore the names of persons listed on the Company's pay roll of January 6, 1946.

At the reopened hearing the CIO objected to the granting of a place on the ballot to the LEA on the ground that the LEA had become dormant before the hearing in the instant case was reopened. The Trial Examiner referred this objection to the Board. Because it is abundantly clear from the foregoing that the LEA is a functioning labor organization with a sufficient interest in the proceeding to entitle it to a place on the ballot, we shall overrule the objections and include the LEA on the ballot.

<sup>8</sup> On February 25, 1943, the Board found appropriate a unit of the Company's militarized guards (47 N. L. R. B. 1032). Thereafter, following an election, the CIO was certified by the Board as the collective bargaining representative of these employees. At the time of the reopened hearing the guards were no longer militarized or deputized. The CIO sought the inclusion in a production and maintenance unit of the guards, as well as the watchmen who are also unmilitarized and undeputized. The other parties took no position on this issue. Under all the circumstances and because the record does not disclose whether these employees have monitorial or non-monitorial functions, we are herewith making provision for the inclusion of the guards and watchmen only if they possess non-monitorial functions.

duction and maintenance employees, and that it will attain that goal within 2 years, by hiring, as soon as conditions warrant, between 100 and 150 employees per month. The record further shows that this change will apparently invoke no materially different operations or processes. At the time of the hearing, the Company was experiencing same delay in its plans since it was then considering the reduction of the working week from between 40 and 45 hours to 32 hours in order to spread the work among an employee complement too large for the work on hand.

Under these circumstances, we do not believe that the large number of employees with representative skills now working at the plant should be deprived simply because the Company intends to expand its working force, of their present rights to bargain collectively with the Company as provided in the Act. We shall, accordingly, proceed with an immediate determination of representatives. However, because the number of production and maintenance employees may more than double within a comparatively short time as a result of the Company's planned expansion, we shall entertain a new representation petition affecting the employees in this unit within a period less than 1 year but not before the expiration of 6 months from the date of any certification which we may issue in this proceeding upon proof that (1) the number of employees in this unit is more than double the number of employees eligible to vote in the election herein-after directed; and (2) the petitioning labor organization represents a substantial number of employees in the expanded unit.<sup>9</sup>

We shall, accordingly, 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 our 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 Lord Manufacturing Company, Erie, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days

<sup>9</sup> See *Matter of United Engineering & Foundry Co.*, 57 N. L. R. B. 1208; *Matter of Aluminum Company of America*, 52 N. L. R. B. 1040.

from the date of this Direction, under the direction and supervision of the Regional Director for the Sixth 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 United Rubber Workers of America, CIO, or by Lord Employees Association, 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.