

In the Matter of ALLIANCE WARE, INC. and UNITED STEELWORKERS OF
AMERICA, C. I. O.

Case No. 8-R-2062.—Decided April 8, 1946

Mr. Bruce W. Eaken, of Cleveland, Ohio, for the Company.

Mr. H. E. Knapp, of Alliance, Ohio, for the Steelworkers.

Mr. Harry E. Moreland, of Alliance, Ohio, for the Independent.

Mr. F. G. Dunn, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the Steelworkers, alleging that a question affecting commerce had arisen concerning the representation of employees of Alliance Ware, Inc., Alliance, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George F. Hayes, Trial Examiner. The hearing was held at Alliance, Ohio, on February 7, 1946. The Company, the Steelworkers, and the Alliance Porcelain Products Employees Association, Inc., herein called the Independent, which was given permission to intervene by the Trial Examiner, 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. At the hearing and in their briefs, the Independent and the Company moved for the dismissal of the petition upon the grounds discussed in Section III, *infra*. Rulings on said motions were reserved by the Trial Examiner for the Board. For reasons hereinafter stated, the motions are hereby denied. 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

Alliance Ware, Inc., is an Ohio corporation engaged in the manufacture of bath tubs, wash tubs, lavatories, and sinks. During the past year, the Company purchased raw materials in excess of \$500,000, of which 10 percent came from outside the State of Ohio. The sales of finished products amounted to in excess of \$1,500,000, of which 95 percent was shipped outside the State of Ohio.

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

II. THE ORGANIZATIONS INVOLVED

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

Alliance Porcelain Products Employees Association, Inc., is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 9, 1940, a consent election was held among the employees of the Company. As a result of this election, the Independent was certified by the Regional Director for the Eighth Region as the sole bargaining agent for the employees of the Company. Since that time, the Company has bargained with the Independent. On January 26, 1945, a contract was negotiated between the Company and the Independent which, by its terms, would have expired on January 26, 1946. On December 12, 1945, the Acting Regional Director for the Eighth Region directed a letter to the Company stating that the Steelworkers had filed a petition alleging that a question concerning representation existed as to certain employees of the Company. On January 4, 1946, 22 days before the expiration of the above-mentioned contract, and after receipt of notice of the filing of the petition herein by the Steelworkers, the Company entered into a new contract with the Independent. The Company and the Independent have moved to dismiss the petition of the Steelworkers on the ground that the new contract is a bar to a determination of representatives. Under the circumstances, the new contract is not a bar to an investigation and determination of representatives and the motion to dismiss is accordingly denied.¹

¹ See *Matter of Sterling Engine Company*, 41 N. L. R. B. 191; *Matter of General Chemical Company*, 48 N. L. R. B. 988; *Matter of J. M. Portela & Company, Inc.*, 61 N. L. R. B. 64.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Steelworkers represents a substantial number of employees in the unit hereinafter found appropriate.²

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 that all production and maintenance employees, including group leaders and set-up men but excluding foremen, assistant foremen, clericals, timekeepers, time-study employees, watchmen, janitors, production scheduling clerks, and all or any 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.³

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 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 representatives for the purposes of collective bargaining with Alliance Ware, Inc., Alliance, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of

² The Field Examiner reported that the Steelworkers submitted 140 signed cards. There are approximately 255 employees in the appropriate unit. The Company contends that the statement of the Field Examiner is not sufficient because no proof was offered that the signatures were genuine and for the further reason that the signatures were not checked against a pay-roll list. We find the Company's contentions are without merit. Authenticity of the cards is not a matter for challenge or litigation by other parties. *Matter of Allis-Chalmers Manufacturing Company*, 56 N. L. R. B. 203; *Matter of American Finishing Company*, 54 N. L. R. B. 996, *Matter of Frigidaire Division, General Motors Corporation*, 54 N. L. R. B. 55, *Matter of H. G. Hills Stores, Inc., Warehouse*, 39 N. L. R. B. 874; *Matter of Jasper Chair Company*, 63 N. L. R. B. 632; *Matter of Baker & Company, Inc.*, 65 N. L. R. B. 646.

³ This is the unit petitioned for by the Steelworkers, and the one previously bargained for by the Independent. It does not appear that there is any disagreement among the parties as to the appropriateness of this unit.

this Direction, under the direction and supervision of the Regional Director for the Eighth 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 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 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 or not they desire to be represented by United Steelworkers of America, C. I. O., or by Alliance Porcelain Products Employees Association, Inc., for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.