

In the Matter of SUPERIOR ENGRAVING COMPANY *and* INDEPENDENT PHOTO ENGRAVERS ASSOCIATION AND CHICAGO PHOTO ENGRAVERS UNION No. 5, A. F. OF L.

In the Matter of SUPERIOR ENGRAVING COMPANY *and* INDEPENDENT PHOTO ENGRAVERS ASSOCIATION

Cases Nos. 13-RE-38 and 13-R-3248, respectively.—Decided April 29, 1946

Mr. Otto A. Jaburek, of Chicago, Ill., for the Company.

Mr. Joseph M. Jacobs, of Chicago, Ill., for the Photo Engravers.

Mr. Charles J. Tressler, of Chicago, Ill., for the Association.

Mr. Harry R. Ehrlich, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Superior Engraving Company, herein called the Company and Independent Photo Engravers Association, herein called the Association, each alleging that a question affecting commerce had arisen concerning the representation of employees of Superior Engraving Company, Chicago, Illinois, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Leon A. Rosell, Trial Examiner. The hearing was held at Chicago, Illinois, on January 29 and February 4, 5, and 6, 1946. The Company, the Association, and Chicago Photo Engravers Union No. 5, of the International Photo Engravers Union of North America, A. F. of L., herein called the Photo Engravers, 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 the Photo Engravers moved to dismiss the petitions on the ground that there existed no question concerning representation. Ruling was reserved for the Board. For the reasons set forth in Section III, *infra*, the motion is hereby granted. 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

Superior Engraving Company is an Illinois corporation with its plant and offices located at Chicago, Illinois, where it is engaged in the manufacture of engraving plates. During 1945, the Company purchased raw materials valued in excess of \$75,000, nearly all of which was purchased in the State of Illinois, and 75 percent of such raw materials originated from points outside the State of Illinois. During the same period, the sales of the Company were in excess of \$500,000, approximately 50 percent of which was shipped by it to points outside the State of Illinois.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Independent Photo Engravers Association, unaffiliated, is a labor organization, admitting to membership employees of the Company.

Chicago Photo Engravers Union, No. 5, of the International Photo Engravers Union of North America, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On October 18, 1943, following a consent election, the Photo Engravers was certified by the Board as the bargaining representative of the Company's employees in its photo engraving department. The Photo Engravers and the Company entered into negotiations on October 20, 1943, and in the following meetings orally agreed upon a number of proposals. Five issues remained unresolved.¹ On December 6, 1943, after an impasse had been reached, a conciliator of the Department of Labor was called in. The attempts of the conciliator were unsuccessful, and on March 4, 1944, the case was certified to the Regional War Labor Board. Panel hearings were held in June, July, August, and September 1944.

The War Labor Board panel board was issued on December 20, 1944,

¹ The closed shop, double time for over-time, apprentice provision, and a portion of the grievance procedure.

and both the Company and the Photo Engravers filed appeals. On May 17, 1945, the Regional War Labor Board issued its Directive Order.² The Company appealed from this Order and the case was certified to the National War Labor Board on July 4, 1945. While this appeal was pending, the petitions in this proceeding were filed on September 1 and 8, 1945, respectively.

On October 18, 1945, the National War Labor Board issued a Directive Order which denied the Company's motion for review, granted a closed shop, and provided that the terms and conditions of the Regional War Labor Board's Directive Order should be incorporated in a signed agreement. On November 10, 1945, the Photo Engravers submitted a proposed contract to the Company incorporating the terms of the War Labor Board's directives.

On November 20, 1945, the Photo Engravers charged the Company with non-compliance in a letter to the War Labor Board. In December 1945, the Company notified the War Labor Board that it did not intend to comply with its Directive Order.³

The Photo Engravers contends that the principles enunciated in the *Allis-Chalmers* case⁴ are applicable here and, consequently, that no question concerning representation has arisen. We find merit in its contention. The evidence discloses that the crucial issue preventing the Photo Engravers from securing the benefits of collective bargaining was the content of the substantive bargain and its resort to the War Labor Board for settlement thereof. The Photo Engravers promptly opened bargaining negotiations after its certification and diligently took the steps open to it in securing the necessary approval of its bargaining program by the War Labor Board. In thus resorting to the peaceable and orderly procedures of Government for settlement of the issues in dispute, it has been deprived of a reasonable opportunity to obtain for the Company's employees the benefits of collective bargaining which normally would have resulted from its certification as their bargaining representative. We are therefore of the opinion that the previous certification of the Photo Engravers and the present state of negotiations constitute a bar to this proceeding. Accordingly, the petitions for certification of representatives will be dismissed.⁵

² The Regional Board's Order, among other things, refused to act on the issue of representation, granted a closed shop, set the termination date of the contract to be signed by the parties as June 15, 1945, and referred the question of wages back to the parties for further negotiations.

³ In January 1946, the Photo Engravers filed 8 (5) charges with the Board. However, by letter dated March 21, 1946, the Photo Engravers waived the 8 (5) charges to permit an immediate adjudication of the issues involved herein.

⁴ 50 N. L. R. B. 306.

⁵ See *Matter of Truscon Steel Company*, 66 N. L. R. B. 204. Cf. *Matter of Jackson Box Company*, 59 N. L. R. B. 808, and *Matter of Sears, Roebuck and Co.*, 65 N. L. R. B. 1039.

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 petitions for investigation and certification of representatives of employees of Superior Engraving Company, Denver, Colorado, filed by Superior Engraving Company and Independent Photo Engravers Association be, and they hereby are, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.