In the Matter of WILMINGTON TERMINAL WAREHOUSE COMPANY, ALEXANDER SPRUNT & SON, INC., WATERFRONT HANDLING COMPANY, CHAMPION COMPRESS & WAREHOUSE COMPANY, INC., *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, CIO

Case No. 5-R-2207.—Decided May 27, 1946

Messrs Thornton H. Brooks and *Kenneth M. Brim,* of Greensboro, N. C., for the Company.

Mr. James C Simone, of Newport News, Va., and *Mr. B. E Davis,* of Wilmington, N. C., for the CIO.

Mr. V. E Townsend, of Jacksonville, Fla., and *Messrs. Perry Harvey, David McWhite,* and *Ezekial Williams,* of Wilmington, N. C., for the AFL.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended petition duly filed by Industrial Union of Marine and Shipbuilding Workers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Wilmington Terminal Warehouse Company, Alexander Sprunt & Son, Inc., Waterfront Handling Company, and Champion Compress & Warehouse Company, Inc., all of Wilmington, North Carolina, herein called the Companies,[1] the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. The hearing was held at Wilmington, North Carolina, on March 28, 1946. The Companies, the CIO, and International Longshoremen's Association, AFL, herein called the AFL, appeared and participated. All parties were

[1] In addition to the above-named companies, the petition also named two other companies, Wilmington Shipping Company and Wilmington Oil & Fertilizer Co., the names of which were stricken from the petition at the hearing upon motion of the CIO

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. The motions to dismiss the proceeding filed by the Companies and the AFL, are granted and the motion to dismiss the AFL's intervention, filed by the CIO, is denied for reasons hereinafter stated. All parties were afforded an 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 COMPANIES

Wilmington Terminal Warehouse Company, a North Carolina corporation, has its principal office and place of business in Wilmington, North Carolina, where it is engaged in operating warehouses for the storage of fertilizer materials, tobacco, lumber, and general cargo. During the fiscal year ending June 30, 1945, Wilmington Terminal Warehouse Company exported 98,974 tons of products, of which approximately 90 percent was received at the warehouse in Wilmington from points outside the State of North Carolina.

Alexander Sprunt & Son, Inc., a corporation with its principal office and place of business in Wilmington, North Carolina, is engaged in the buying and selling of cotton, a substantial portion of which is received from points outside the State of North Carolina and stored in Wilmington by Champion Compress & Warehouse Company, Inc., a wholly owned subsidiary of Alexander Sprunt & Son, Inc. In past years, a substantial quantity of the cotton sold by Alexander Sprunt & Son, Inc., has been exported from Wilmington to points outside the State of North Carolina.

Waterfront Handling Company, a North Carolina corporation, has its principal office and place of business in Wilmington, North Carolina, where it is engaged solely in the business of supplying labor to waterfront operators who handle and store various goods and products. Of such goods and products, a substantial amount is both received and delivered in interstate commerce.

Champion Compress & Warehouse Company, Inc., a North Carolina corporation and a wholly owned subsidiary of Alexander Sprunt & Son, Inc., has its principal office and place of business in Wilmington, North Carolina, where it is engaged in the operation of warehouses for the storage and handling of cotton, tobacco, sugar, and miscellaneous products. During the past year, Champion Compress & Warehouse Company, Inc., stored substantial amounts of cotton, sugar, and tobacco

which were received at its Wilmington warehouse from points outside the State of North Carolina. Of the items reshipped from storage, all of the tobacco has been customarily shipped to points outside the State of North Carolina.

The Companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Companies.

International Longshoremen's Association, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION; THE ALLEGED APPROPRIATE UNIT

On November 28, 1945, the CIO requested that the Companies recognize it as exclusive bargaining representative for the warehouse employees of each of the Companies concerned. The Companies denied the CIO's request upon the ground that they had a collective bargaining agreement with the AFL. Both the Companies and the AFL urge the contract as a bar to the present proceeding. In reply thereto, the CIO contends that the contract was, so far as warehouse employees are concerned, substantially incomplete at the date of the CIO's request for recognition and also that AFL, at the time the contract was executed, did not represent a majority of the warehouse employees involved herein.

The contract relied upon by the Companies and the AFL is an exclusive bargaining agreement executed on November 12, 1945, and effective until September 30, 1947. As originally executed the contract applied only to longshoremen and did not extend to employees in warehouse classifications. However, on the day of execution, the contract was amended by written memorandum to cover warehouse employees in all respects other than the wage scale and job classifications contained therein.[2] In addition thereto, the parties on this occasion orally agreed in the presence of a commissioner from the U. S. Conciliation Service that, if they should not be able to agree upon a wage scale and job classifications for warehouse employees, they would submit such issues to final

[2] Although the contract as of November 12, 1945, contained no specific wage scale for warehouse employees, it provided in effect longshoremen's rates for certain work customarily done by warehouse employees in trucking merchandise to and from the warehouse and dock.

arbitration under the arbitration procedure established by the written agreement. Although the latter agreement did not, at the time of its execution, resolve all issues then outstanding between the parties, such agreement was, nevertheless, a binding contract which settled a substantial number of questions relating to collective bargaining.[3] Under these circumstances, and particularly in view of the contemporaneous agreement to refer to arbitration the only remaining issue between the parties to the written agreement, we are of the opinion that the contract of November 12, 1945, as amended by the memorandum of the same date, constitutes a valid exclusive bargaining agreement applicable to the warehouse employees herein concerned.[4]

In regard to the further contention of the CIO that the AFL did not, on the date when the contract was executed, represent a majority of the warehouse employees of the Companies, it is the practice of the Board in representation cases, at least so far as the question of a bar to the proceeding is concerned, to presume the legality of a collective bargaining agreement and to refuse to admit evidence on the question whether, at the time the contract was executed, a majority of the employees covered by such contract had designated the contracting union as their bargaining representative.[5] Accordingly, the contention of the CIO is rejected.

Since it does not appear that the CIO made any claim of representation to the Companies prior to the execution of their contract with the AFL, we find that the contract constitutes a bar to a present determination of representatives. Moreover, although the bargaining history of the Companies together with that of similar concerns elsewhere in the industry does not preclude the establishment of a separate unit for warehouse employees, the inappropriateness of such a unit for the employees of the Companies is indicated by the frequent and substantial interchange of such employees between longshore and warehouse work. We shall, accordingly, dismiss the petition filed by the CIO in the instant proceeding.

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 petition for investigation and certification of representatives of

---

[3] A collective bargaining agreement which, although not determinative of all issues, settles a substantial number of questions relating to collective bargaining is sufficiently complete to operate as a bar to a representation proceeding. See *Matter of Pullman Standard Car Manufacturing Company*, 51 N. L. R. B. 661.

[4] See *Matter of Pullman Standard Car Manufacturing Company, supra, Matter of DeBardeleben Coal Corporation*, 51 N. L R. B. 1412, 1414.

[5] See *Matter of The Lamson Brothers Company*, 59 N L R B. 1561; *Matter of United States Rubber Company*, 62 N. L. R. B. 795.

employees of Wilmington Terminal Warehouse Company, Alexander Sprunt & Son, Inc., Waterfront Handling Company, and Champion Compress & Warehouse Company, Inc., all of Wilmington, North Carolina, filed by Industrial Union of Marine and Shipbuilding Workers of America, CIO, be, and it hereby is, dismissed.

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