

IN the Matter of SONOTHERM MANUFACTURING Co., INC. and CONSTRUCTION & GENERAL LABORER'S UNION, LOCAL 304, AFFILIATED WITH BUILDING TRADES COUNCIL OF ALAMEDA COUNTY, AFL and WAREHOUSE UNION, LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, CIO

*Case No. 20-RE-50.—Decided June 27, 1946*

*Messrs. F. C. Jones and E. J. Shaw, of San Francisco, Calif., and Mr. E. A. Woodside, of Oakland, Calif., for the Company.*

*Mr. C. J. Janigian, of San Francisco, Calif., and Messrs. J. C. Reynolds and P. L. Jones, for the AFL.*

*Messrs. R. D. Heide and J. Gomes, of Oakland, Calif., for the CIO.*

*Mr. Martin E. Rendelman, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by Sonotherm Manufacturing Co., Inc., Berkeley, California, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before William T. Whitsett, Trial Examiner. The hearing was held at San Francisco, California, on June 7, 1946. The Company, Construction & General Laborers' Union, Local 304, affiliated with Building and Construction Trades Council of Alameda County, AFL, herein called the AFL; and Warehouse Union, Local 6, International Longshoremen's and Warehousemen's Union, CIO, herein called the CIO, 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 AFL moved to dismiss the petition on the ground that the Company is not engaged in commerce within the meaning of the National Labor Relations Act. For reasons set forth in Section I, *infra*, the motion is 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

Sonotherm Manufacturing Co., Inc., a California corporation having its principal plant in Berkeley, California, is engaged in the manufacture of wall board. During the year ending May 20, 1946, the Company purchased raw materials valued in excess of \$26,000 from sources within the State of California. During the same period the Company sold finished products valued in excess of \$70,000, approximately 10 percent of which was shipped to purchasers outside the State of California.

Contrary to the AFL's contention, the Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Construction & General Laborers' Union, Local 304, affiliated with Building Trades Council of Alameda County, in turn affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Warehouse Union, Local 6, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the AFL or the CIO as the exclusive bargaining representative of certain of its employees until one of these unions has been certified by the Board in an appropriate unit.

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 parties agree that all production and maintenance employees of the Company, excluding clerical and supervisory employees, constitute an appropriate unit for collective bargaining purposes. Some doubt has arisen, however, as to the supervisory status of the foreman, Jack Oakley. The Company and the CIO would exclude him, whereas the AFL requests his inclusion.

The record discloses that the foreman does not have the authority to hire and discharge other employees of his own accord, but that he can, and does, effectively recommend such action. About 90 percent of his time is spent in the supervision of other employees and only 10 percent in actual production work. Clearly, he falls within our usual definition of a supervisory employee, and we shall, therefore, exclude him from the unit hereinafter found appropriate.

We find that all production and maintenance employees of the Company, excluding clerical employees, the foreman, 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

The AFL contends that, because it is presently picketing the Company's plant and a strike called by the CIO has recently been concluded, no election should be conducted at the present time. We find this contention to be without merit.

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 Sonotherm Manufacturing Co., Inc., Berkeley, California, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth 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 va-

cation 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 Construction & General Laborers' Union, Local 304, affiliated with Building Trades Council, of Alameda County, AFL, or by Warehouse Union, Local 6, International Longshoremen's and Warehousemen's Union, CIO, for the purposes of collective bargaining, or by neither.