

In the Matter of W & F MANUFACTURING CO., INC. and BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 431, A. F. OF L.

Case No. 3-R-1264.—Decided July 2, 1946

Messrs. D. Rumsey Wheeler and Adrian Block, of Buffalo, N. Y., for the Company.

Mr. Peter J. Crotty, of Buffalo, N. Y., for the A. F. of L.

Mr. Edward Rosenhahn, of Buffalo, N. Y., for the C. I. O.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Bakery and Confectionery Workers International Union of America, Local 431, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of W & F Manufacturing Co., Inc., Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cyril W. O'Gorman, Trial Examiner. The hearing was held at Buffalo, New York on June 10, 1946. The Company, the A. F. of L., and Playthings, Jewelry and Novelty Workers International Union, C. I. O., herein called the C. I. O., appeared and participated.¹ 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 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

W & F Manufacturing Co., Inc., a New York corporation with its principal office and place of business in Buffalo, New York, is engaged

¹ At the hearing, the Trial Examiner granted a motion to intervene made by the C. I. O. 69 N. L. R. B., No. 32.

in the manufacture, sale, and distribution of confections, candles, chewing gum, containers and miscellaneous wax products. During the 12 months preceding the hearing the Company purchased raw materials valued in excess of \$250,000, 50 percent of which was shipped to the Company from points outside the State of New York. During the same period the value of the Company's finished products was in excess of \$500,000, 75 percent of which was shipped to points outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

Bakery and Confectionery Workers International Union, Local 431, affiliated with the American Federation of Labor; and Playthings, Jewelry and Novelty Workers International Union, affiliated with the Congress of Industrial Organizations, are labor organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the A. F. of L., as the exclusive bargaining representative of certain of its employees, until the A. F. of L. 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

We find, in accordance with the agreement of the parties, that all production and maintenance employees of the Company, including machine shop employees, but excluding clerical employees and all 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.²

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

² At the hearing all parties agreed upon the composition of the unit, except that the A. F. of L. objected to the inclusion of machine shop employees. In a subsequent letter to the Board, however, which is hereby made a part of the record, the A. F. of L. withdrew its objection and agreed to the inclusion of these workers.

in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject of 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 W & F Manufacturing Co., Inc., Buffalo, New York, 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 Third 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 they desire to be represented by Bakery and Confectionery Workers International Union of America, Local 431, A. F. of L., or by Playthings, Jewelry and Novelty Workers International Union, C. I. O., 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.