

In the Matter of WORTH HARDWARE CO., INC., EMPLOYER and WHOLE-
SALE & WAREHOUSE WORKERS UNION, LOCAL 65, CIO, PETITIONER

Case No. 2-R-6933.—Decided November 14, 1946

Messrs. David R. Haber and Max Dworetz, of New York City, for the Employer.

Messrs. Leonard H. Wacker and Al Evanoff, of New York City, for the Petitioner.

Buitenkant & Cohen, by Mr. Arnold Cohen, of New York City, and Mr. Herman Plotnick, of New York City, for the AFL.

Mr. Robert J. Freehling, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at New York City, on September 30, 1946, before Jerome I. Macht, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Worth Hardware Co., Inc., a New York corporation, is engaged at its place of business in New York City, in the wholesale jobbing of hardware. During the 12 months preceding the hearing, the Employer purchased hardware for resale valued in excess of \$250,000, of which approximately 90 percent represented shipments from sources outside the State of New York. During the same period, the Employer sold hardware valued in excess of \$250,000, of which approximately 33 percent represented shipments to customers outside the State.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

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II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

Federal Labor Union, Local 20734, herein called the AFL, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer and the AFL have had collective bargaining contracts covering the employees involved herein since October 1937. On October 18, 1941, they entered into a closed-shop agreement which provides for an initial period of 2 years, and for its automatic renewal annually thereafter in the absence of at least 45 days' notice before the expiration of the then current term. This agreement was subsequently renewed in 1944 and 1945. In June 1946, the Employer advised the AFL that, in view of the considerable number of individual demands for wage increases, it desired to negotiate a new agreement before the expiration, on October 18, 1946, of the existing contract. The parties thereafter, on June 20, 1946, executed an agreement, effective from June 5, 1946, until October 18, 1947, embodying therein substantially all terms of the existing contract, together with certain wage increases.

Subsequently, by letter dated August 7, 1946, the Petitioner advised the Employer of its designation by the employees at this operation as their bargaining representative, and sought to initiate collective bargaining negotiations. The Employer refused to enter into such negotiations, and, on August 12, 1946, the Petitioner filed its petition herein.

The AFL contends that the contract effective June 5, 1946, constitutes a bar to the instant proceeding, because it was executed by the parties thereto in good faith before the Petitioner's demand for recognition. The Employer takes no position on this issue.

We find no merit in the AFL's contention. It is clear from the record that the June 1946 agreement was executed before the Mill B date¹ of the contract which was to expire on October 18, 1946, and, consequently, was a premature extension of the latter contract. Accordingly, inasmuch as the Petitioner's demand for recognition was made, and its subsequent petition herein filed, before the Mill B date

¹The operative date of an automatic renewal clause has come to be known as the "Mill B date" of a contract. *Matter of Mill B, Inc.*, 40 N. L. R. B. 346

of the extended contract, we are of the opinion that, under well-established principles of the Board, the June 1946 agreement, irrespective of the good faith of the contracting parties, cannot operate as a bar to a current determination of representatives.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, substantially in accord with the agreement of the parties, that all employees of the Employer, including warehouse employees³ and office clerical employees,⁴ but excluding salesmen, officers, executives, and all other supervisory employees⁵ 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.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Worth Hardware Co., Inc., New York City, 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 Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately pre-

² *Matter of Blair Limestone Company*, 70 N L R B. 689; *Matter of Virginia-Lincoln Corporation*, 63 N L R B 590, and *Matter of Wichita Union Stockyards Company*, 40 N L R B. 369. Cf. *Matter of Dryden Rubber Company*, 71 N L R B 572, and *Matter of Northwestern Publishing Company (WDAN)*, 71 N L R B. 167.

³ Included in this category is the shop foreman, who has heretofore been a part of the contract unit and who does not appear to be a supervisor within the Board's customary definition of that term.

⁴ There are approximately 16 warehouse employees and 3 office clerical employees in the stipulated unit which is identical with the contract unit. These categories together have comprised the unit covered by the collective bargaining agreements in effect since 1937 between the AFL and the Employer. In view of this bargaining history and the present agreement of the parties that such unit is appropriate, the inclusion of the office clerical employees in the unit composed predominantly of warehouse employees is here appropriate as an exception to the Board's general practice of excluding office clerical workers from a warehousemen's unit. Cf. *Matter of A O Smith Corporation*, 70 N L R B 1288, *Matter of K M V. Inc.*, 65 N L R B 1129; and *Matter of A Baldwin & Co., Inc.*, 33 N L R B 934.

⁵ The parties stipulated, and we find, that the head bookkeeper and assistant bookkeeper are supervisory employees within the Board's customary definition.

ceding 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 Wholesale & Warehouse Workers Union, Local 65, CIO, or by Federal Labor Union, Local 20734, AFL, for the purposes of collective bargaining, or by neither.