In the Matter of DOHRMANN HOTEL SUPPLY COMPANY (MANUFACTURING DIVISION), EMPLOYER *and* WAREHOUSEMEN'S UNION LOCAL 860, AFL, PETITIONER

Case No. 20–R–1802.—Decided November 15, 1946

Messrs. John R. Cummings and *Bruce Dohrmann*, of San Francisco, Calif., for the Employer.

Tobriner & Lazarus, by *Mr. Albert Brundage*, of San Francisco, Calif., and *Messrs. Mark J. Reilly* and *John McBride*, both of San Francisco, Calif., for the Petitioner.

Messrs. Dominic Gallo, Tony Koslosky, and *Julius Rosenthal*, all of San Francisco, Calif., for the CIO.

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

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at San Francisco, California, on July 23, 1946, before Louis R. Mercado, 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

Dohrmann Hotel Supply Company, a Nevada corporation, is engaged in the manufacture, sale, distribution, and installation of hotel and restaurant equipment and supplies at various locations in the western part of the United States. In connection with its business, the Employer operates sundry sales, manufacturing, and warehouse facilities throughout the area covered by its operations. Only the warehouse operations at its facilities in San Francisco and Oakland, California, are involved in these proceedings. During the past year, the Employer purchased materials and supplies valued in excess of

$200,000, of which approximately 30 percent was shipped to its plants in the San Francisco area from points outside the State of California.

The Employer does not deny and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

Local 1–6, International Longshoremen's and Warehousemen's Union, CIO, herein called the CIO, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize either the Petitioner or the CIO as the exclusive bargaining representative of employees of the Employer until one or the other of such organizations has been certified by the Board in an appropriate unit.

The CIO contends that its present closed-shop contract with the Employer as member of an employer association is a bar to the present proceeding. In support of its contention, the CIO asserts that the contract, the scope of which is governed by earlier agreements negotiated by the predecessor in interest of the CIO, is applicable to the warehouse employees sought to be represented by the Petitioner in the present proceeding. The Petitioner, on the other hand, maintains that the contract is inapplicable to the present group of employees and is therefore not a bar to the proceeding.

The record discloses that the contract in question is limited in coverage to "employees engaged in classifications, house by house, covered by former agreements." So far as the Employer is concerned, the only former agreement relevant to the present issue is an agreement executed in 1937 covering all warehouse employees at the then existing facilities of the Employer in the San Francisco area. There is, however, no specific provision in this agreement which would make the agreement applicable to plants which might thereafter be established by the Employer. The agreement has, moreover, never been applied by the Employer or the contracting union to the warehouse employees in the plant herein concerned, which was established by the Employer in 1941, 3 years prior to the termination of such agreement. Similarly, the existing CIO contract executed on June 1, 1944, and admittedly only a continuation of the original agreement, has never been applied by either party to the present group of warehouse employees who apparently have been without representation

throughout the period covered by the existing contract and were not members of any labor organization until shortly before the filing of the petition in the present proceeding.

In view of the foregoing facts, we are of the opinion that at the time the 1944 contract was executed, the contracting parties intended that it should cover only those employees for whom the predecessor in interest of the CIO had bargained, namely, the warehouse employees of the Employer at its facilities which existed at the date of the original 1937 agreement.[1] Accordingly, we find that the existing CIO contract is not a bar to the present proceeding. Moreover, assuming *arguendo* that the present CIO contract was intended to cover warehouse employees at plants established by the Employer after 1937,[2] since there is nothing in the record to indicate that the contract in question has ever been applied in any respect to the warehouse employees herein concerned, or that the latter have participated in the negotiation of the 1944 contract or otherwise have ever had an opportunity to express for themselves their desires with respect to being included under the terms of such contract, we are of the opinion that the contract would not constitute a bar to a present investigation and determination of representatives.[3]

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; THE DETERMINATION OF REPRESENTATIVES

The Petitioner contends that all persons employed at the Employer's 8th Street plant who are employed as warehousemen, issue clerks, shipping and receiving clerks, excluding truck drivers, sheet metal workers,[4] office workers and all supervisory employees,[5] constitute an appropriate unit. The CIO contends that only a multiple-plant unit comprising all warehouse employees of the Employer at both its 8th

[1] See *Matter of Sydney Thomas Corporation*, 58 N. L. R B 51; *Matter of Universal Pictures Company, Inc*, 61 N L. R. B. 1001; cf *Matter of Santiam Lumber Co*, 71 N L. R. B 5

[2] The CIO argues that its failure to apply the contract in question to the present group of warehouse employees was occasioned not by its belief that the contract was inapplicable to such employees, but by its ignorance of the fact that the Employer had established a new plant employing warehouse employees. There is, however, evidence in the record from which it may be inferred that the CIO has long known of the establishment by the Employer of the plant herein concerned.

[3] See *Matter of American Warming & Ventilating Co.*, 38 N. L. R B. 515; *Matter of Chase Brass & Copper Co, Inc*, 47 N L. R B 298.

[4] Sheet metal workers are presently represented by the Sheet Metal Workers Union which has a collective bargaining agreement with the Employer.

[5] All parties agreed at the hearing that two subforemen who have authority to recommend the hire and discharge of employees should be excluded from any unit which the Board may find appropriate

Street plant and at its Mission Street store [6] constitute an appropriate unit. The Employer takes no position and requests that the Board determine the question of the appropriate unit.

The record reveals that, although the operations of the 8th Street plant and the Mission Street store are integrated and are under the same over-all supervision, the warehouse employees at the 8th Street plant are carried on a separate pay roll, are not frequently interchanged with those at the Mission Street store,[7] and are under the local supervision of two supervisory employees whose recommendations regarding change of status are relied upon by the supervisor in charge of plant operations. As previously indicated, the warehouse employees at the 8th Street plant have not been members of or actively represented by any labor organization throughout the period covered by the existing CIO contract, and also have never had an opportunity to determine for themselves whether they desire to be represented in an association-wide warehousemen's unit coextensive with the Employer's operations in this area. Under the circumstances, including the fact that these employees have not been covered, at least in practice, by either of the exclusive bargaining contracts applicable to the other warehouse employees of the Employer, we are of the opinion that the present group of warehouse employees might properly constitute a separate appropriate unit or be merged in a unit including other warehouse employees of the Employer, depending upon the results of a self-determinative election.[8]

In the absence of a question concerning representation of the Employer's other warehouse employees, we shall direct an election to determine whether the warehouse employees at the 8th Street plant desire to be represented separately for collective bargaining purposes apart from other warehouse employees of the Employer. Upon the results of this election will depend, in part, our determination of the appropriate unit. If a majority of the 8th Street plant warehouse employees select the AFL they will be taken to have indicated their desire to constitute a separate bargaining unit; if a majority of those participating in the election select the CIO, they will be taken to have indicated their desire to become a part of the unit presently represented by the CIO and may be bargained for as part of such unit.

We shall direct an election in the following voting group: All persons employed by the Employer at its 8th Street, San Francisco plant, as warehousemen, including issue clerks, shipping and receiving

[6] The warehouse employees at the Mission Street store are covered by the existing contract between the Employer and the CIO.

[7] Although a few interchanges occurred during the recent war period, there is at present no general practice of interchanging warehouse employees between the 8th Street plant and the Mission Street store

[8] See *Matter of D T Williams Valve Company*, 59 N L R B 1206; *Matter of Bercut-Richards Packing Company, et al*, 68 N L R B 605

clerks, but excluding truck drivers, sheet metal workers, office 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.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Dohrmann Hotel Supply Company (Manufacturing Division), San Francisco, 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 Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the voting group referred to 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 Warehousemen's Union Local 860, AFL, or by Warehouse Union Local 6, I. L. W. U., CIO, for the purposes of collective bargaining, or by neither.