

In the Matter of A. GROSS CANDLE COMPANY, INC., EMPLOYER and
CONGRESS OF INDUSTRIAL ORGANIZATIONS, PETITIONER

Case No. 5-R-2632.—Decided February 20, 1947

*Messrs. Joseph T. Brennan and Charles Ruzicka, of Baltimore, Md.,
for the Employer.*

*Messrs. Frank J. Bender and Robert J. Bryllke, of Baltimore, Md.,
for the Petitioner.*

Mr. Jerry Wohlmuath, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

Upon a petition duly filed, the National Labor Relations Board on November 13, 1946, conducted a prehearing election among employees of the Employer in the alleged appropriate unit to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.

At the close of the election, a Tally of Ballots was furnished the parties. The Tally shows that, of the approximately 80 eligible voters, 67 cast ballots, of which 51 were for the Petitioner, 8 were cast against Petitioner, 7 ballots were challenged, and 1 ballot was void. Thereafter, a hearing was held at Baltimore, Maryland, on December 27, 1946, before Earle Shawe, 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

A. Gross Candle Company, Inc., is a Delaware corporation operating its sole plant and offices in Baltimore, Maryland, where it is engaged in the manufacture of church candles. Raw materials utilized annually by the Employer are valued in excess of \$100,000, of which

72 N. L. R. B., No. 148.

50 percent originates outside the State of Maryland. Finished products manufactured annually by the Employer are valued in excess of \$150,000, approximately 50 percent of which is shipped to points outside the State.

II. THE ORGANIZATION INVOLVED

Congress of Industrial Organizations is a labor organization admitting to membership employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner 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 Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties are generally in agreement that the appropriate unit should be composed of all production and maintenance employees, excluding office clericals, maintenance engineers, powerhouse engineers and powerhouse relief engineers, watchmen and supervisory employees. They are in dispute, however, as to the status of certain employees hereinafter discussed.

Petitioner challenged the ballots of Anna Karpiewicz, Josephine Szczpanik, Jessie Kordek, and Henry Harmen on the grounds that they possess supervisory authority. However, pursuant to a stipulation between the parties, the challenges were withdrawn and no evidence was introduced to indicate that these employees possess supervisory status within the Board's customary definition thereof. Accordingly, we shall include the four above-named employees in the unit.

We find that all production and maintenance employees,¹ excluding office clericals, maintenance engineers, powerhouse engineers and powerhouse relief engineers, watchmen, 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.

¹ Including Anna Karpiewicz, Josephine Szczpanik, Jessie Kordek, and Henry Harmen

V. THE DETERMINATION OF REPRESENTATIVES

The Employer objects that the election should not have been held until unfair labor charges previously filed by the Petitioner against the Employer had been disposed of by the Board. Inasmuch as the Petitioner filed a waiver of any right to urge any of the matters contained in these charges as the basis for objections to any election, or to the result thereof, we find no merit in this contention.² ' 1

We also reject the Employer's contention that the election should be set aside for the reason that the day before the election the Petitioner distributed a circular to the employees which stated that the Employer owned another plant in Newark, New Jersey, and that better working conditions prevailed there than in Baltimore as a result of a bargaining agreement with the C. I. O. The evidence adduced at the hearing indicates that the Petitioner acted in good faith in assuming the Employer still controlled the Newark Plant, since the Employer's letterhead, which is still in use, displays the picture and address of this plant. Moreover, the objection otherwise lacks merit because the Board held that, absent such statements as would prevent the employees from exercising a free choice in an election, it does not function to weigh the truth or falsity of mere campaign propaganda, or to censor the enthusiastic efforts of union adherents to win others to their cause.³

¹ Inasmuch as the results of the election held prior to the hearing show that the Petitioner has received a majority of the valid votes cast and that the challenged ballots are insufficient in number to affect the results of the election,⁴ we shall not direct that the challenged ballots be opened and counted, but will certify the Petitioner as the bargaining representative of the Employer's employees.

CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that the Congress of Industrial Organizations has been designated and selected by a majority of all production and maintenance employees of A. Gross Candle Company, Inc., Baltimore, Maryland, excluding office clericals, maintenance engineers, powerhouse engineers and powerhouse relief engineers, watchmen, and all

² *Matter of Teesdale Manufacturing Company*, 71 N L R B 932

³ *Matter of Maywood Hosiery, Inc.*, 64 N L R B 146

⁴ With respect to the three ballots challenged by the Employer, the parties stipulated at the hearing that two of these challenges should be sustained because they involve employees who had been discharged prior to the election. The Employer withdrew the challenge to the ballot cast by Anthony Buda, since investigation disclosed that his name was inadvertently left off the eligible list

supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

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