

In the Matter of ALLIED CONTAINER CORPORATION, EMPLOYER and LOCAL 504, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, PETITIONER

Case No. 1-RC-55.—Decided April 6, 1948

Messrs. Benjamin Levin and A. Morris Kobrick, of Boston, Mass., for the Employer.

Messrs. John Devlin and W. Frank Holland, of Boston, Mass., for the Petitioner.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition ¹ duly filed, hearing in this case was held at Boston, Massachusetts, on December 29, 1947, before Sam G. Zack, hearing officer. At the hearing, the Employer moved to dismiss the petition on the grounds (a) that the Petitioner is not qualified to represent the employees in the unit sought, and (b) that the International has no power to become a party to a collective bargaining contract.² The hearing officer referred this motion to the Board. For the reasons hereinafter stated, this motion is hereby denied.

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Allied Container Corporation, a Massachusetts corporation, is engaged in the manufacture of corrugated boxes at Hyde Park, Massa-

¹ The petition herein was originally filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the International, which moved, after the hearing, to substitute its Local 504 as the Petitioner in this proceeding. As the Employer does not oppose this motion, it is hereby granted.

² The Employer concedes that the constituent locals of the International are authorized to enter into contractual relations. In view of the substitution of Local 504 as Petitioner, this aspect of the Employer's motion to dismiss has been rendered moot

*Chairman Herzog and Members Murdock and Gray.

chusetts. The Employer annually purchases materials valued at approximately \$200,000, of which 95 percent is received from points outside the Commonwealth of Massachusetts. The Employer annually sells products valued in excess of \$400,000, of which 55 percent is shipped to points outside the Commonwealth of Massachusetts.

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

II. THE ORGANIZATION INVOLVED

The Petitioner 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 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.

At the hearing the Employer moved to dismiss the petition on the ground that, by reason of provisions in the constitution of the International relating to eligibility for membership, the Petitioner is precluded from representing the production and maintenance employees of the Employer. We find this contention to be without merit. In the absence of evidence that the Petitioner will not accord the employees adequate representation, the willingness of the petitioning union to represent the employees concerned and the employees' designation of the union are controlling under the Act.³

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) 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 production and maintenance employees at the Employer's Hyde Park, Massachusetts, plant, including truck drivers, but excluding office and clerical employees, salesmen, foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

³ *Matter of The Ingalls Shipbuilding Corporation*, 73 N. L. R. B. 374; *Matter of Federated Publications, Inc.*, 74 N. L. R. B. 1054, *Matter of Hall Level & Manufacturing Works*, 72 N. L. R. B. 165, and cases cited therein

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation be resolved by an election by secret ballot, subject to the limitations and additions set forth in the Direction. The Employer contends that it is in process of expanding its staff and that the election should be postponed until the proposed complement is reached. At the time of the hearing, 74 persons were employed in the unit. The Employer's representative testified that a total of approximately 100 persons would be employed within 2½ or 3 months next following the hearing. As substantially more than 50 percent of the maximum number of employees anticipated was already employed at the time of the hearing, and by this time the Employer's contemplated expansion in force may be largely completed, we see no reason to delay an election.⁴

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Allied Container Corporation, Hyde Park, Massachusetts, 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 First Region and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the 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, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by Local 504, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, for the purposes of collective bargaining.

⁴ *Matter of Textron, Incorporated*, 73 N. L. R. B. 393.