

In the Matter of THE OHIO CHEMICAL & MFG. CO.,¹ JOHNSON STREET BUILDING, EMPLOYER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1406, PETITIONER

Case No. 31-RC-I.—Decided April 9, 1948

Mr. Tom C. Clark, of New York City, and *Mr. A. H. Swanstrom*, of Madison, Wis., for the Employer.

Mr. P. L. Siemiller, of Chicago, Ill., for the Petitioner and the Research Department International Association of Machinists.

Messrs. John A. Lawton and *George A. Patterson*, of Madison, Wis., for the Intervenor.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Madison, Wisconsin, on December 10, 1947, before Robert Ackerberg, hearing officer. United Steelworkers of America, Local 3370, hereinafter referred to as the Intervenor, sought to intervene in this proceeding, as a party for all purposes.² Because of its failure to comply with Section 9 (f), (g), and (h) of the Act, the hearing officer ruled that the intervention should be limited to the issuance of whether the Intervenor's contract was a bar to the proceeding. Despite this ruling, the Intervenor was later permitted by the hearing officer to participate on all issues throughout the hearing. We have previously held that a non-complying union which has a contract may intervene without limitation and may present evidence on all relevant issues.³ However, since the hearing officer did not enforce his erroneous ruling in this respect and afforded the Intervenor full opportunity to present all relevant evidence on the issues raised at the hearing, we find that the ruling was not prejudicial to the Intervenor in the present instance.⁴

¹ The name of the Employer appears in the caption as amended at the hearing.

² The Intervenor stated, however, at the hearing, that the only evidence it could introduce would be proof of the existence of a contract with the Employer.

³ See *Matter of American Chain and Cable Company*, Case No. 4-R-2752, remanded February 17, 1948. See order reopening record and referring proceeding to Regional Director.

⁴ See *Matter of Newark Transformer Company*, 76 N. L. R. B. 145.

The remainder of the hearing officer's rulings made at the hearing are likewise free from prejudicial error and are hereby affirmed.⁵ The motion of the Intervenor to be allowed a place on the ballot is denied for reasons hereafter stated.

Upon the entire record in the case, the National Labor Relations Board⁶ makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Ohio Chemical & Mfg. Co., a Delaware corporation, is engaged in the manufacture and sale of hospital equipment at its district offices, warehouses, and plants in various sections of the United States, including the plant at the Johnson Street Building at Madison, Wisconsin, with which we are here concerned. The Employer annually purchases for use in its Madison operations raw materials valued in excess of \$200,000, all of which are received from points outside the State of Wisconsin. The Employer annually sells finished products valued in excess of \$1,000,000, all of which are shipped to points throughout the United States.

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

II. THE PARTIES INVOLVED

The Petitioner is an unaffiliated labor organization claiming to represent employees of the Employer.

United Steelworkers of America, Local 3370, herein called the Intervenor, 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 has refused to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer, asserting

⁵ The ruling of the hearing officer denying the several motions made by the Intervenor to require the Petitioner to present proof of the extent of its representation among the employees in the proposed unit is affirmed. As we have frequently stated, the showing of interest is an administrative matter and therefore not subject to collateral attack. *Matter of Bauer-Schweitzer Hop & Malt Company*, 72 N. L. R. B. 1223, 1228, and 1229, *Mascot Stove Company*, 75 N. L. R. B. 427.

⁶ 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 [Chairman Herzog and Members Houston and Reynolds].

as the reason therefor an existing contractual relationship with the previously certified Intervenor.⁷

The Intervenor contends that its present contract with the Employer constitutes a bar to the proceeding. The most recent contract between the Employer and the Intervenor was executed on April 3, 1946. This contract provided for an initial period from the date of execution until November 2, 1947, and for its automatic renewal annually thereafter in the absence of written notice by either party at least sixty (60) days prior to the termination date of a desire to change or terminate the agreement. On August 16, 1947, the Petitioner requested that the Employer recognize it as the bargaining representative of its employees, and on August 26, 1947, it filed its petition herein.

As the petition herein was filed before the automatic renewal date of the 1946 contract, we find, in accordance with well-established principles of the Board, that the contract cannot bar a current determination of representatives.⁸

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

The parties are in agreement that all production and maintenance employees at the Johnson Street plant of the Employer, including employees in the toolroom, pattern shop, machine maintenance, building service, machine shop, assembly, apparatus repair, plating and polishing, assembly and machine shop inspection, receiving, the shipping room, the stockroom, machine metal and fabricating department, suture department, research shop, watchmen-janitors and watchmen-firemen, truck drivers, and group leaders, but excluding office and clerical employees, inspection group leaders, and all supervisors, constitute an appropriate bargaining unit.

Among the maintenance employees whom the parties would include are employees described as watchmen-janitors and watchmen-firemen who combine with their maintenance duties service as watchmen. The record is not clear as to what proportion of their time is spent in such service. If they spend more than half of their working time as watchmen, we will consider that they are "employed as a guard" within

⁷ The record discloses that, on August 28, 1944, following a consent election on August 18, 1944, the Intervenor was certified in *Matter of Scanton-Morris Division of The Ohio Chemical & Mfg. Co.*, Case No. 13-R-2523, as representative of a two-plant unit. This was divided into individual plant units as a result of a subsequent election. 71 N. L. R. B. 903.

⁸ See *Matter of Firestone Tire & Rubber Company*, 76 N. L. R. B. 226, and cases cited therein.

the meaning of Section 9 (b) (3) of the amended Act, and they will be excluded from the unit; otherwise they will be regarded as maintenance employees and will be included.⁹

We find that all production and maintenance employees at the Johnson Street plant of the Employer, including employees in the tool-room, pattern shop, machine maintenance, building service, machine shop, assembly, apparatus repair, plating and polishing, assembly and machine shop inspection, receiving, the shipping room, the stock-room, machine metal and fabricating department, suture department, research shop, truck drivers, and group leaders, but excluding office and clerical employees, inspection group leaders, guards and all supervisors, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION¹⁰

As part of the investigation to ascertain representatives for the purpose of collective bargaining with The Ohio Chemical & Mfg. Co., Johnson Street Building, Madison, Wisconsin, 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 Thirteenth 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 International Association of Machinists, Lodge No. 1406, for the purposes of collective bargaining.

⁹ See *Matter of Radio Corporation of America*, 76 N L R B 826; *Matter of Steelweld Equipment, Inc.*, 76 N L R B 831. Although Mr. Reynolds would include these part-time watchmen, for reasons stated in his dissenting opinion in *Matter of Radio Corporation of America* and *Matter of Steelweld Equipment, Inc.*, *supra*, he deems himself bound by the majority decisions in those cases.

¹⁰ Having failed to comply with the filing requirements of Section 9 (f), (g), and (h) of the Act, as amended, the Intervenor will not be accorded a place on the ballot.