

In the Matter of INTERNATIONAL HARVESTER COMPANY, EMPLOYER *and*
SAM MARCHESE, PETITIONER *and* INTERNATIONAL ASSOCIATION OF
MACHINISTS, UNION

Case No. 16-RD-9.—Decided April 23, 1948

Messrs. Frank B. Schwarzer and R. F. Graham, both of Chicago, Ill.,
and *Mr. C. T. Helin*, of Houston, Tex., for the Employer.

Mr. Sam Marchese, of Houston, Tex., for the Petitioner.

Mr. L. M. Fagan, of Fort Worth, Tex., and *Mr. J. W. Ray*, of Houston, Tex., for the Union.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Houston, Texas, on January 28, 1948, before Charles Y. Latimer, 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 Board¹ makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

International Harvester Company is a New Jersey Corporation whose general offices are located in Chicago, Illinois. It is engaged in the manufacture of trucks, farm equipment, refrigeration, and industrial power equipment in several States, and operates branch houses and distributing points for its products in most of the States of the Union. Its branch house, located in Houston, Texas, which alone is involved here, serves as a sales outlet for the Employer's products which are shipped to the Houston branch from the Employer's plants outside the State. In the past year sales at the Houston branch exceeded one million dollars.

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

¹ 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 [Houston, Murdock, and Gray].

II. THE PARTIES INVOLVED

The Petitioner, an employee of the Employer, asserts that the Union is no longer the representative of the Employer's employees as defined in Section 9 (a) of the Act.

The Union, a labor organization, was established on October 5, 1945, as the exclusive bargaining representative of the Employer's employees as a result of a consent election.

III. THE QUESTION CONCERNING REPRESENTATION

On October 5, 1945, as noted above, the Union became the exclusive representative of the Employer's employees as a result of a consent election. On December 4, 1945, the Employer executed an agreement with the Union for the term of 1 year, with provision for renewal from year to year thereafter unless notice to terminate or modify was given by either party at least 30 days prior to the terminal date of the contract. Neither party gave notice in 1946, and the contract was automatically renewed for another year. On October 3, 1947, and again on November 4, 1947, the Union notified the Employer of its desire to renegotiate the contract. Under the terms of the contract these notices automatically extended the life of the contract 60 days beyond the terminal date unless a new agreement was reached sooner. No agreement on the terms of a new contract was reached between the Employer and the Union, and on November 28, 1947, the Petitioner filed the instant petition to decertify the Union. The Union contends that its contract of December 4, 1945, as extended, is a bar to the instant proceeding. We find, however, that the petition was timely filed, and the contract is therefore not a bar.²

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 Petitioner and the Employer contend that the appropriate unit is properly defined in the contract of December 4, 1945, as consisting of all mechanics, helpers, and apprentices, but excluding office and clerical employees, parts department employees, the service station foreman, and the service station assistant foreman, all other supervisors, and all other employees of the Employer's Houston, Texas, branch. The Union agrees with this definition except that it wishes

² *Matter of Drewrys Limited U. S. A. Inc.*, 74 N. L. R. B. 31.

The Union's contention that the contract remains in effect until one of the parties gives notice to terminate is without merit inasmuch as the effect might be to prolong the contract indefinitely.

to include the janitors working in the Employer's motor truck service shop. These janitors work in the same room, under the same supervision, and under the same working conditions as the employees covered by the contract unit. Their duties, however, are janitorial, and are unrelated to those of the employees covered by the contract unit. There are janitors in other departments of the Employer's Houston, Texas, plant whom the Union does not seek to represent. Inasmuch as the janitors do not have the same interests as the mechanics, and were excluded from the unit as defined in the consent election and in the contract between the Employer and the Union,³ the janitors will be excluded from the unit.

We find that all mechanics, helpers, and apprentices of the Employer's Houston, Texas, branch, excluding office and clerical employees, parts department employees, the service station foreman, the service station assistant foreman, all other supervisors, guards, and professional employees, as defined in the amended Act, and all other employees of the Employer's Houston, Texas, branch, constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.⁴

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with International Harvester Company, Houston, Texas, 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 Sixteenth 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 this 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, for the purposes of collective bargaining.

³ *Matter of The Ellis Canning Company*, 67 N. L. R. B. 384; *Matter of Union Iron Works*, 67 N. L. R. B. 772; *Matter of Fairbanks, Morse & Co.*, 66 N. L. R. B. 673.

⁴ This is virtually the same unit as that defined in the collective bargaining agreement between the Union and the Employer. The description of the unit has been changed slightly to conform with the provisions of the amended Act.