In the Matter of THE NATIONAL SUPPLY COMPANY *and* AMERICAN FEDERATION OF LABOR

Case No. 8-R-1425.—Decided May 23, 1944

Messrs. C. F. Dorrell and *James Apsey*, of Toledo, Ohio, for the Company.

Messrs. William F. Sturm, *Lawrence A. Stengle*, and *Leonard Monohan*, of Toledo, Ohio, for the AFL.

Messrs. David Guberman and *Edward Duck*, of Toledo, Ohio, for the CIO.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Federation of Labor, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of The National Supply Company, Toledo, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Cleveland, Ohio, on March 29, 1944. The Company, the AFL, and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 12 (CIO), herein called the CIO, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The National Supply Company, a Pennsylvania corporation, operates a plant in Toledo, Ohio, where it is engaged in the manufacture

of oil-field equipment and propulsion gears for the armed forces of the United States. The raw materials used by the Company at its Toledo plant are steel, iron, and brass, the annual dollar value of which exceeds $500,000. In excess of 52 percent of such raw materials comes from outside the State of Ohio. The annual dollar value of its finished products exceeds $1,000,000, approximately 90 percent of which is shipped to points outside the State of Ohio.

We find that the operations of the Company affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The American Federation of Labor and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local 12, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the AFL as the exclusive bargaining representative of its militarized guards on the grounds that they may not properly be represented by a statutory agent for collective bargaining purposes, and that if they are entitled to bargain collectively, they are covered by an existing contract between the Company and the CIO.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.[1]

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The AFL requests a unit composed of the militarized guards employed by the Company. The Company and the CIO contend that the guards are ordinary watchmen and should be included in the general production and maintenance unit presently represented by the CIO.[2]

Prior to the war emergency the Company employed a staff of watchmen who took care of the factory gate, checked safety devices, and

[1] The Field Examiner reported that the AFL submitted 16 application-for-membership cards, 9 of which bore signatures of persons listed on the Company's pay roll of March 1, 1944, which contained the names of 14 employees in the appropriate unit; and that the cards were dated 7 in January 1944, 2 undated

[2] At the hearing the Company did not press its objection to the organization of guards The objection is, of course, untenable. See *Matter of Budd Wheel Company*, 52 N L R B. 666.

generally performed duties incident to safeguarding the Company's property. They were neither armed nor uniformed and they were represented for puposes of collective bagaining together with other production and maintenance employees of the plant. With the advent of war, the Company enlarged its plant, and upon request of the War Department increased its plant-protection force by employing 23 guards who were armed, uniformed, and sworn in as members of the Auxiliary Military Police and deputies of the municipal police. Although the guards performed in the extended portion of the plant duties similar to those of the watchmen in the original plant, their duties and authority were broader than those of the watchmen. They worked under separate supervision and were treated by the Company and the CIO as a distinct group, excluded from coverage under the CIO's collective bargaining contract.

On February 8, 1944, the War Department directed the Company to reduce its complement of plant guards to normal, prudent, peacetime requirements. The Company thereupon reduced its guard force to 14 persons and relieved them of their arms and special guard duties. The Company asserts that within the next 60 days it intends to take them out of uniform and to place guards and watchmen under the same supervision. The guards will remain deputized until December 1944 when the special license issued them will have expired, and they will remain militarized indefinitely. The Company and the CIO contend that the elements of distinction between guards and watchmen have been removed and that guards are now a part of the unit covered by the contract between the CIO and the Company. We find no merit in this contention. *In Matter of Dravo Corporation*,[3] we found that militarization *per se* is a sufficient factor upon which to base the separation of militarized plant-protection employees from non-militarized plant-protection employees for purposes of collective bargaining. In accordance with the rule stated in the *Dravo* case, we hold that the militarized guards employed by the Company must be represented in a unit separate and apart from non-militarized employees of the Company so long as they remain militarized and deputized.[4]

We find that all militarized guards of the Company, excluding the chief guard and any other 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.

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[3] 52 N. L. R B 322.

[4] See *Matter of Kimberly-Clark Corporation*, 55 N. L. R. B. 521; Supplemental Decision, *Matter of Phelps Dodge Refining Corporation*, 55 N. L. R B 761; Supplemental Decision, *Matter of Commonwealth Edison Company*, 55 N. L. R B 465. See also *Matter of Continental Can Company*, 55 N. L R B 146; *Matter of Parks Air College, Inc*, 55 N L. R. B. 1034.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The CIO stated that if the Board directs an election in the unit requested by the AFL it does not desire a place on the ballot.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The National Supply Company, Toledo, Ohio, 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 Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, 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, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any 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 or not they desire to be represented by American Federation of Labor, for the purposes of collective bargaining.