

In the Matter of M. H. BIRGE AND SONS COMPANY and UNITED WALL  
PAPER CRAFTSMEN AND WORKERS OF NORTH AMERICA

Case No. R-426.—Decided February 15, 1938

*Wall Paper Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of certain specific employees: rival organizations; controversy between rival organizations as to appropriate bargaining unit—*Unit Appropriate for Collective Bargaining:* proposal of petitioning union to include hand printers, screen process printers, and the engraver in established craft unit of skilled employees; craft unit of skilled employees; craft unit held inappropriate for these employees; wage differentials; history of collective bargaining relations in plant and industry—*Order:* dismissing petition.

*Mr. Peter J. Crotty*, for the Board.

*Locke, Babcock, Hollister & Brown*, by *Mr. G. C. Lea*, of Buffalo, N. Y., for the Company.

*Mr. Rudolph Heintz*, of Chicago, Ill., for the United.

*Mr. Hugh Thompson* of Buffalo, N. Y., and *Mr. Claude R. Kramer*, of Massillon, Ohio, for Local 138.

*Mr. D. R. Dimick*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On September 4, 1937, United Wall Paper Craftsmen and Workers of North America, herein called the United, filed with the Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of M. H. Birge and Sons Company, Buffalo, New York, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 1, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 5, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon

the United, and upon the United Wall Paper Workers, Local 138, affiliated with the Committee for Industrial Organization, herein called Local 138, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on November 22, 1937, at Buffalo, New York, before George Bokart, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the United by its business agent, and Local 138 by a regional director of the Committee for Industrial Organization. All parties participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issue was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. A motion was made that the petition be amended to include one engraver. The Trial Examiner granted the motion. The Board has reviewed the rulings of the Trial Examiner and finds no prejudicial errors were committed. The rulings are hereby affirmed.

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

#### FINDINGS OF FACT

##### 1. THE BUSINESS OF THE COMPANY

M. H. Birge and Sons Company is a New York corporation which owns and operates at Buffalo, New York, a plant for the manufacture, printing, sale and distribution of wall paper. The Company employs approximately 293 employees of which about 245 are engaged in production and maintenance. The others are salesmen, clerks, and supervisory officials. Included among the 245 employees are approximately six hand printers, twelve screen process printers, and one engraver.

The Company purchases from 40 to 60 per cent of its raw materials outside of the State of New York. Clay, paper stock, glue, colors, and materials for colors constitute the greater part of the raw materials used in the manufacturing of wall paper. Paper stock is largely obtained in Massachusetts; the clay comes from Georgia; the glues originally come from Illinois but are purchased through the local house of Armour & Company. The Company ships to customers outside of the State of New York about 80 per cent of its finished products.

Salesmen, 14 in number, are employed by the Company and travel all over the country. They receive orders from customers in the field and transmit the orders directly to the Buffalo plant. The Company advertises in magazines and trade journals having a national circulation.

## II. THE ORGANIZATIONS INVOLVED

United Wall Paper Craftsmen and Workers of North America, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all workers excluding clerical workers and supervisory officials.

United Wall Paper Workers, Local 138, is a labor organization affiliated with the Committee for Industrial Organization. The record is silent as to the classes of the Company's employees eligible for membership in this organization.

## III. THE APPROPRIATE UNIT

For approximately the past 40 years the United or its predecessors has bargained exclusively with the Company for three crafts, namely, machine printers, color mixers, and print cutters.<sup>1</sup> The Company's employees in the three crafts total approximately 40 or 50. In a Decision of the National Labor Relations Board dated May 14, 1936, it was held that the employees of the Company in the three crafts constitute a unit appropriate for the purpose of collective bargaining.<sup>2</sup> In the same Decision the United was designated as the exclusive representative of all the employees in the unit. Until 1937, the United did not solicit as members or seek to represent any employees of the Company other than those belonging to the three crafts.

In October 1936, the Board<sup>3</sup> of the United had a meeting in New York, and there decided on a policy of organizing all employees with the exception of clerical workers and supervisory employees in the 32 wall paper plants located in the United States. At the time of the hearing the United had signed closed-shop agreements, identical in their terms, covering the employees in 29 of the 32 plants. The plant of the Company involved here was one of the three plants which was not covered by such an agreement. Indeed, it was not until about June 1937 that the United began its organization drive at the Company's plant or sought membership among the employees of the Company except in the three craft groups.

About three or four weeks prior to such organizational drive on the part of the United, Local 138 began to organize employees of the Company and the record indicates that a majority of the employees, excluding those in the three crafts theretofore organized by the United, had joined Local 138 by the time the United's organizational drive began. Apparently Local 138 did not attempt to secure members from the employees in the three crafts represented by the

<sup>1</sup> 1 N. L. R. B., 731, 735.

<sup>2</sup> 1 N. L. R. B., 731, 746.

<sup>3</sup> So designated in the record.

United. As a result of negotiations between the Company and Local 138, the Company agreed that, effective July 1, 1937, workers, including the engraver, hand printers, and screen process printers, should be given a 10-per cent increase. The agreement apparently did not cover the employees belonging to the three crafts.

The record indicates that during July 1937 a majority of the hand printers and screen process printers, together with the engraver, became affiliated with the United.

It is under the foregoing circumstances that the United on September 4, 1937, filed its petition for investigation and certification of representatives asking that it be designated the exclusive bargaining representative for the hand printers, screen process printers, and engraver. Notwithstanding the wording of the petition, the record indicates that the United in fact sought to have hand printers, screen process printers, and the engraver included as part of one unit made up of such employees and the employees in the three crafts already represented by the United.

About September 17, 1937, the Company signed an agreement recognizing Local 138 as the sole and exclusive collective bargaining agency for all employees of the Company, exclusive of the employees in the three crafts, and subject to any determination of the Board as to the engraver, hand printers, and screen process printers. The agreement, which is to remain in effect until September 1, 1938, further provides for a wage schedule which sets forth base rates, hours, and overtime.

A few days prior to the execution of the above agreement, the Company and the United executed a contract wherein the United was recognized as the sole and exclusive bargaining agency for the employees in the three crafts. The agreement also provided that it should apply to the engraver, hand printers, and screen process printers if the Board determined that the United was the proper representative of such employees.

The United states in support of its contention that the engraver, hand printers, and screen process printers should be represented by the United and should not be included in an industrial unit as proposed by Local 138, that all, or most of such employees, are members of the United, and that they are skilled workers performing work more closely related to the work done by the employees within the three crafts of the Company.

Since the Company is apparently the only one of the 32 wall paper manufacturing concerns in the United States which produces an exclusive and expensive type of hand-blocked and hand-printed wall paper, the hand printers and screen process printers engaged in such production occupy a somewhat unique position in the wall paper manufacturing industry. As is true of the employees in the

three heretofore mentioned crafts, considerable skill is involved in the performance of the work done by the hand printers, screen process printers, and the engraver. However, the same may be said regarding the work of other employees in the plant, such as stampers, engineers, and machinists, whom the United does not seek to include within the bargaining unit. The workers in the three crafts, as well as certain other employees of the Company, receive a substantially higher wage as a remuneration for their services than do the employees in question.

Furthermore, as pointed out above, the United did not until July 1937 solicit as members or seek to represent any employees of the Company other than those belonging to the three crafts. It began to seek other employees of the Company only after Local 138 started to organize the employees on an industrial basis. The general policy adopted by the United in October 1936, did not contemplate the organizing of wall paper manufacturing employees on the basis here sought by the United. That policy called for organization upon an industrial basis in each of the wall paper plants in the United States. Thus, neither the former policy of the United nor the policy invoked in October 1936 involve organization of the Company's employees upon the basis asked for in the Petition for Investigation and Certification.

We feel that under all the circumstances the hand printers, screen process printers, and the engraver should not be considered as a separate bargaining unit, or as a part of a bargaining unit composed of such employees and the employees in the three crafts. We find, therefore, that the unit asked for by the United is not appropriate for the purpose of collective bargaining.

#### IV. THE QUESTION CONCERNING REPRESENTATION

The petition of the United, as pointed out in Section III above, relates solely to 19 specific employees, that is, the engraver, hand printers and screen process printers. It has been determined that a unit such as proposed does not constitute an appropriate unit for purposes of collective bargaining. We find, therefore, that no question has arisen concerning representation of the engraver, the hand printers, and the screen process printers employed by the Company.

We do not at this time determine whether any question concerning representation would arise if the Board were requested to certify the representatives of the employees of the plant exclusive of the three crafts represented by the United.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

**CONCLUSION OF LAW**

No question concerning representation of the engraver, the hand printers, and the screen process printers, as employees of the Company exists within the meaning of Section 9 (c) of the National Labor Relations Act.

**ORDER**

Upon the basis of the foregoing findings of fact and conclusion of law the National Labor Relations Board hereby dismisses the Petition for Investigation and Certification filed by United Wall Paper Craftsmen and Workers of North America.