

In the Matter of MARTIN BROS. BOX COMPANY and TOLEDO INDUSTRIAL  
UNION COUNCIL

*Case No. R-529.—Decided May 10, 1938*

*Box Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union; rival organizations; strike—*Agreement:* oral agreement, expiring in short time, no bar to direction of election—*Unit Appropriate for Collective Bargaining:* all employees at plant in Toledo, Ohio, excluding supervisory and clerical employees; similarity of working conditions and method of payment—*Election Ordered:* eligibility to vote determined as of pay-roll period preceding date of Direction of Election—*Certification of Representatives.*

*Mr. Harry L. Lodish*, for the Board.

*Mr. John W. Hackett* and *Mr. James M. Evans*, of Toledo, Ohio, for the Company.

*Mr. Edward Lamb* and *Mr. Lowell M. Goerlich*, of Toledo, Ohio, for the Council.

*Mr. Arnold R. Cutler*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 9, 1937, Toledo Industrial Union Council, herein called the Council, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Martin Bros. Box Company, Toledo, Ohio, 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 27, 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 December 3, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the

Council, and upon Millmen's Union, Local 1359, herein called the Local, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice and two notices of postponement, duly served upon all the aforesaid parties, a hearing was held on December 16, 1937, at Toledo, Ohio, before William H. Griffin, the Trial Examiner duly designated by the Board. The Board, the Company, and the Council were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues 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. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the close of all the evidence offered in behalf of the Council and before the Company offered any evidence, the Company made a motion that the petition be dismissed for failure of proof sufficient to entitle the petitioner to the relief prayed for in the petition. A ruling on the motion was reserved by the Trial Examiner. The Board has considered the motion and hereby denies it.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

The Company, an Ohio corporation, operates two plants, one at Toledo, Ohio, with which this case is concerned, and the other at Aurora, Indiana. It has warehouses in Chicago, Illinois, and St. Louis, Missouri. The Company is engaged in the manufacture of wire-bound, corrugated and wooden boxes, sold for packing and shipping purposes.

The principal materials purchased by the Company are lumber, wire, nails, and liner board, almost all of which come from outside the State of Ohio. About 40 per cent of the finished products manufactured at the Toledo plant are shipped to points outside the State of Ohio.

At the Toledo plant, during the first 11 months of the calendar year 1937, purchases of raw materials amounted to approximately \$200,000 and sales amounted to approximately \$400,000.

##### II. THE ORGANIZATIONS INVOLVED

Toledo Industrial Union Council is a labor organization affiliated with the Committee for Industrial Organization. It admits to mem-

bership all employees of the Company at its Toledo plant, excluding supervisory and clerical employees.

Millmen's Union, Local 1359, is a labor organization affiliated with the American Federation of Labor. It admits to membership all employees of the Company at its Toledo plant, excluding teamsters, and supervisory and clerical employees.

### III. THE QUESTION CONCERNING REPRESENTATION

In September 1936, the employees of the Company at its Toledo plant were first organized and Local 1359 was formed. In December of that year the Company and the Local, following various conferences, entered into an oral agreement by which wages were to be increased and hours decreased at the Toledo plant. The agreement, which was retroactive from October 5, 1936, was to run for 1 year from that date.

At the meetings of the Local, which were held monthly, further increases in wages were discussed, and negotiations between the Company and the Local were again begun sometime in the early part of 1937. Due to the illness of the president of the Company, however, a further or second contract was not consummated until June or July. It superseded the prior contract and was to be effective from June 21, 1937 to June 21, 1938. This second contract, which was also oral, appeared to cover only an increase in wages. Though the contract was concluded sometime in June or July the increases granted thereunder were not paid to the employees forthwith, but were withheld, due, the Company states, to the decreased office staff because of vacations during the summer months. When, by September 1937, the increases had still not been made, some of the employees at the Toledo plant, dissatisfied with the results achieved through the collective bargaining of the Local, decided to form a new union and change their affiliation. About September 3, 1937, one of these employees approached the regional director of the Committee for Industrial Organization for the Toledo district and on September 13, 1937, the Council held the first organizational meeting of the employees of the Company at the Toledo plant, followed by a second meeting on September 22, 1937.

On September 25, 1937, before the workday started at the Toledo plant, the superintendent discharged two men, the contention of the Council being that it was because they had joined the Council. On the same day the business agent of the Local appeared at the Toledo plant, called a meeting of the negotiating committee of the Local, and advised them that the agreement with the Company at the Toledo plant provided for a closed shop and that the members could

not join any other union. This was apparently the first mention of any such provision and is the only evidence in the record that any such provision was in fact agreed upon. Also on September 25, though the regular pay day was the day before, the Company paid its employees the accrued increase in wages retroactive from June 21, 1937, in accordance with the second contract.

On the following Monday, September 27, 1937, because the Company refused to reinstate the two discharged employees, 13 employees, followed by others thereafter, went out on strike.<sup>1</sup> That night the Council had another meeting, at which its membership was further increased. All the membership of the Council was obtained between September 13 and 27, 1937.

On September 29, 1937, the Council sought to bargain with the Company. The Company, however, refused to bargain on the ground that it had an existing contract with the Local.

The Company claims that the Board should not direct an election or certify representatives at this time in view of the oral agreement which expires June 21, 1938. Inasmuch as the contract expires at such an early date, it is not necessary herein to consider its scope or effect. The contract would not in any event preclude bargaining with respect to terms to be applicable after June 21.

We find that a question has arisen concerning the representation of employees of the Company at the Toledo plant.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

The Council contends that the appropriate unit for collective bargaining should consist of all the employees of the Company at the Toledo plant, excluding supervisory and clerical employees. The Local contends that the appropriate unit should consist of all employees of the Company at the Toledo plant, excluding teamsters, and supervisory and clerical employees. Thus the only disagreement between the Council and the Local as to the appropriate unit relates to the teamsters.

<sup>1</sup> Subsequently, it appears, many of the strikers returned to work.

The Company employs at the Toledo plant four teamsters or truck drivers. It was not shown at the hearing that the working conditions or method of payment of the teamsters were different from those of the other employees. Though the Local contended that the teamsters were eligible for membership in an American Federation of Labor union in Toledo which covers teamsters, the evidence indicated that despite efforts on the part of the four teamsters to join such union no attempt had been made by such union to organize them. The only effort to organize the four teamsters was made by the Council. In the absence of any further evidence, we feel that the teamsters employed by the Company at the Toledo plant should be included in the bargaining unit.<sup>2</sup>

We find that the employees of the Company at the Toledo plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company at the Toledo plant the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

There was introduced in evidence a list showing employees of the Company at its Toledo plant on June 19, October 2, and December 11, 1937, respectively. The list shows approximately 87, 65, and 65 employees within the appropriate unit on the respective dates.

The Council produced at the hearing application cards of 61 employees at the Toledo plant. These cards were examined by counsel for the Company, but only a sample card was submitted in evidence. From testimony appearing in the record, and from a stipulation<sup>3</sup> of the Council and the Company, introduced into evidence, it appears that 63 persons whose names appeared on the pay-roll list submitted in evidence, appear on the books of the Local as members in good standing. It is clear, therefore, that there is considerable overlapping of the employees now claimed by the Council and by the Local. Under the circumstances, we are of the opinion that the question which has arisen concerning representation can best be settled by the holding of an election by secret ballot.

Those eligible to vote shall be employees within the appropriate unit, who were employed by the Company during the pay-roll period next preceding the date of the Direction of Election in this case. Such eligibility period is adopted in view of the time which has elapsed since the filing of the petition.

<sup>2</sup> See *Matter of American Sugar Refining Company* and *Committee for Industrial Organization*; *Matter of American Sugar Refining Company* and *United Sugar Workers Union, Local 21023*, 4 N. L. R. B. 897.

<sup>3</sup> The stipulation was prepared and signed by a representative of the Local in the presence of counsel for the Company and the Council, by whom the stipulation was also signed.

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

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Martin Bros. Box Company, Toledo, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Company at its Toledo plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### 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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with Martin Bros. Box Company, Toledo, Ohio, an election by secret ballot shall be conducted within fifteen (15) 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, Section 9, of said Rules and Regulations, among all the employees of Martin Bros. Box Company, at its plant in Toledo, Ohio, who were employed by the Company during the pay-roll period next preceding the date of this Direction, excluding supervisory and clerical employees, to determine whether they desire to be represented by Toledo Industrial Union Council, affiliated with the Committee for Industrial Organization, or by Millmen's Union, Local 1359, affiliated with the American Federation of Labor, or by neither.

[SAME TITLE]

#### CERTIFICATION OF REPRESENTATIVES

*June 14, 1938*

On May 10, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted among all the employees of

Martin Bros. Box Company, Toledo, Ohio, at its plant in Toledo, Ohio, who were employed by the Company during the pay-roll period next preceding the date of the Direction, excluding supervisory and clerical employees, to determine whether they desire to be represented by Toledo Industrial Union Council, affiliated with the Committee for Industrial Organization, or by Millmen's Union, Local 1359, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on May 20, 1938, at Toledo, Ohio, under the direction and supervision of the Regional Director for the Eighth Region (Cleveland, Ohio). Full opportunity was accorded all of the parties to this investigation to participate in the conduct of the secret ballot and to make challenges. On May 23, 1938, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties to the proceedings an Intermediate Report on the election. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote-----	72
Total number of ballots cast-----	69
Total number of ballots counted-----	69
Total number of votes in favor of Toledo Industrial Union Council-----	13
Total number of votes in favor of Millmen's Union, Local 1359--	56
Total number of votes in favor of neither union-----	0
Total number of blank ballots-----	0
Total number of void ballots-----	0
Total number of challenged ballots-----	0

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, 49 Stat. 449, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Millmen's Union, Local 1359, affiliated with the American Federation of Labor, has been designated and selected by a majority of all the employees of Martin Bros. Box Company, at its plant in Toledo, Ohio, excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the National Labor Relations Act, Millmen's Union, Local 1359, affiliated with the American Federation of Labor, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.