

In the Matter of SEISS MANUFACTURING COMPANY and COMMITTEE FOR
INDUSTRIAL ORGANIZATION

Case No. R-629.—Decided May 26, 1938

Metal Products Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; employer's refusal to grant recognition of union; rival organizations—*Unit Appropriate for Collective Bargaining:* production-employees, excluding clerical and supervisory employees; no controversy as to—*Agreement:* oral agreement, of indefinite term and character, no bar to investigation and determination of representatives—*Election Ordered*

Mr. Harry L. Lodish, for the Board.

Mr. Lowell M. Goerlich, of Toledo, Ohio, for Toy Novelty Workers.

Mr. Jules J. Pilliod, of Toledo, Ohio, for Juvenile Wheel Workers.

Mr. A. J. Toth, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 11, 1937, the regional director for the Committee for Industrial Organization,¹ herein called the C. I. O., 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 Seiss Manufacturing 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 January 12, 1938, 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 February 17, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon

¹The record indicates that the petition was filed for and in behalf of Toy Novelty Workers, Local and Industrial Union, Committee for Industrial Organization, herein called Toy Novelty Workers.

the C. I. O., and upon Juvenile Wheel Workers Union, No. 18528,² herein called the Juvenile Wheel Workers, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 9, 1938, at Toledo, Ohio, before Harlow Hurley, the Trial Examiner duly designated by the Board. The Board, the Company, Toy Novelty Workers, and the Juvenile Wheel Workers 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Seiss Manufacturing Company, an Ohio corporation, with its only factory located at Toledo, Ohio, is engaged in the manufacture of metal parts. The raw materials used are steel, brass, and aluminum. Forty per cent of the raw materials are purchased outside of the State of Ohio and 75 per cent of the finished products are shipped out of Ohio. The Company purchased \$61,950.16 worth of raw materials during the year 1937, and its sales for the same year amounted to \$119,400.37 in value. The factory was closed on October 15, 1937, except for a small office force, because of lack of business.

II. THE ORGANIZATIONS INVOLVED

Toy Novelty Workers, Local and Industrial Union, Committee for Industrial Organization, is a labor organization admitting to its membership all production employees of the Company, except clerical and supervisory employees.

Juvenile Wheel Workers Union, No. 18528, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all production employees of the Company, except supervisory and clerical help.

²The notice of hearing was served upon John J. Curtis, a representative of the American Federation of Labor, who acted for and in behalf of the Juvenile Wheel Workers Union, No. 18528, affiliate of the American Federation of Labor.

III. THE QUESTION CONCERNING REPRESENTATION

On August 1, 1936, the Juvenile Wheel Workers entered into a written contract with the Company covering wages, hours, and other conditions of employment. The contract was for a term of 1 year. At the time of the execution of the contract, the Juvenile Wheel Workers was the only labor organization in the plant and apparently represented a majority of the employees. On August 14, 1937, the Juvenile Wheel Workers wrote the Company requesting an extension of the contract until such time as a new agreement was reached, and enclosed a copy of the proposed contract for the ensuing year. There is testimony in the record to the effect that the Company orally agreed to such extension. Thereafter, during September 1937, the Company and the Juvenile Wheel Workers entered into negotiations for the renewal of the contract and agreed upon changes in its terms, but no new contract was ever drawn or signed by the two parties.

During September 1937, the C. I. O. began organizational activities among the Company's employees. Claiming that a majority of the employees desired representation by it, the C. I. O. shortly thereafter requested recognition as the exclusive bargaining representative. The Company, however, refused to negotiate with the C. I. O. on the ground the Company had an oral agreement with the Juvenile Wheel Workers. In view of the indefinite term and character of the alleged oral agreement, it cannot in any event preclude an investigation and determination of representatives by the Board.

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

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

All parties agreed at the hearing that the production employees of the Company, excluding clerical and supervisory employees, constitute an appropriate unit. The Company and the Union bargained on the basis of such a unit in their contract of August 1, 1936.

We find that the production employees of the Company, excluding clerical and supervisory employees, constitute a unit appropriate

for the purposes of collective bargaining and that said unit will insure to employees of the Company 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 were introduced in evidence two pay rolls of the Company, one for September 24, 1937, showing 36 employees within the appropriate unit, and one for October 15, 1937, showing 33 employees within the unit.

The C. I. O. submitted in evidence a list of 19 employees who, it claimed, had signed application cards during September 1937 and two additional cards that had been signed on December 17, 1937. The C. I. O. had at the hearing the application cards from which the list was compiled and introduced the list into evidence in place of the cards. The Juvenile Wheel Workers claimed that the application cards were not signed on the dates specified on the cards and objected to testimony concerning the two additional cards on the ground that they were signed subsequent to the closing of the plant on October 15, 1937. Ten persons whose names appeared on the list introduced by the C. I. O. testified that they signed application cards during September 1937.

Irving Bitz, financial secretary of the Juvenile Wheel Workers, testified that approximately 20 employees on the Company's pay roll of October 15, 1937, were members of the Juvenile Wheel Workers. The employees specified by Bitz in his testimony are substantially the same persons whose names appear on the membership list submitted in evidence by the C. I. O.

Under all the circumstances, we conclude that the question which has arisen concerning representation can best be resolved by an election by secret ballot.

The Company and the Juvenile Wheel Workers contend that if an election is held eligibility to vote should be based on a seniority list prepared on September 25, 1936, for use in conjunction with the contract between the Company and the Juvenile Wheel Workers, as revised on December 22, 1936. This list contains the names of approximately 72 production employees, 8 of whom have since received work elsewhere. The Toy Novelty Workers claim that the Company's pay roll as of October 15, 1937, the date the plant closed, should be used. Since considerable time has elapsed since the seniority list was compiled and since the record indicates that it is questionable whether production, at least at any early date, will increase to such an extent that the Company will require for its

work the number of persons on the seniority list, we conclude that eligibility to vote should be limited to the persons within the appropriate unit employed by the Company during the pay-roll period next preceding October 15, 1937.

We find that the employees in the appropriate unit employed during the pay-roll period next preceding October 15, 1937, the date the plant closed, shall be eligible to vote.

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 the employees of Seiss Manufacturing Company, Toledo, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. All the production employees of the Company, 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 collective bargaining with Seiss Manufacturing 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 the production employees of Seiss Manufacturing Company, Toledo, Ohio, who were employed during the pay-roll period next preceding October 15, 1937, excluding supervisory and clerical employees, to determine whether they desire to be represented by Toy Novelty Workers, Local and Industrial Union, Committee for Industrial Organization, or Juvenile Wheel Workers Union, No. 18528, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.