

In the Matter of E. C. ATKINS AND COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

Case No. 9-R-1200.—Decided October 19, 1943

Mr. Kurt F. Pantzer and Mr. Lewis D. Spencer, of Indianapolis, Ind., for the Company.

Mr. F. M. Richardson and Mr. Walter B. Heisel, Jr., of Indianapolis, Ind., for the Union.

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, District 90 and their affiliate, Local 1683, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of E. C. Atkins and Company, Indianapolis, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Indianapolis, Indiana, on September 24, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company made a motion to dismiss the petition on the ground that plant-protection employees are not employees within the meaning of the National Labor Relations Act. The Trial Examiner reserved ruling. For reasons appearing below, this motion is denied. The Trial Examiner's rulings made at the hearing, are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. Subsequent to the hearing, the Company requested oral argument before the Board. The request is hereby denied.

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

52 N. L. R. B., No. 249.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

E. C. Atkins and Company, an Indiana corporation, is engaged at Indianapolis, Indiana, in the manufacture and sale of saws, tools, and armor plate. The Company operates two plants, both of which are located in Indianapolis, Indiana, and both of which are involved in this proceeding. During the year 1942 the Company purchased raw materials valued in excess of \$500,000, approximately 80 percent of which was shipped from points outside the State of Indiana. During the same period the Company sold finished products valued in excess of \$1,000,000, approximately 80 percent of which was shipped to points outside the State of Indiana. The Company admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District 90 and their affiliate, Local 1683, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.¹

III. THE QUESTION CONCERNING REPRESENTATION

On August 18, 1943, the Union by letter requested recognition as the exclusive bargaining agent for the Company's plant-protection employees. The Company failed to answer the letter. Subsequently, at a conference between the parties, the Company refused to recognize the Union claiming that the unit requested was inappropriate.

A statement prepared by a Field Examiner, introduced in evidence, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

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 Union contends that a unit consisting of all plant guards at the Company's two Indianapolis plants, excluding the chief and lieutenants constitute an appropriate unit. The Company agrees with

¹ International Association of Machinists has requested the Board to take judicial notice of its reaffiliation with the A. F. of L.

² The Field Examiner's statement shows that the Union submitted 51 authorization cards, all of which bear apparently genuine signatures, and 44 of which bear names of persons whose names are listed on the Company's pay roll of September 10, 1943; there are 63 persons within the appropriate unit.

the scope of the unit but contends that such a unit is not an appropriate one since plant guards, who are all auxiliaries of the military police, are not employees within the meaning of the Act. This contention has been advanced in other cases and has been found untenable.³ More recently, in the *Dravo Corporation*⁴ case, the Board fully discussed the question as to whether the militarization of guards alters the character of their employment, stating therein that the relationship of employer and employee still exists despite such militarization. No facts or arguments are presented here which would warrant departing from our prior decisions; accordingly, the Company's contention is rejected.

We find, that all plant guards at the Company's two Indianapolis plants, excluding the chief and lieutenants, and all 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.

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 payroll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with E. C. Atkins and Company, Indianapolis, Indiana, 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 Ninth 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 payroll period immediately preced-

³ *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881; *Matter of Phelps Dodge Copper Products Corp.*, 41 N. L. R. B. 973.

⁴ *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

ing 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, to determine whether or not they desire to be represented by International Association of Machinists, District 90 and their affiliate, Local 1683, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.