

IN the Matter of JOSEPH P. NESTOR AND MARY M. NESTOR, PARTNERS,
DOING BUSINESS AS REIFF & NESTOR COMPANY and DISTRICT 50, UNITED
MINE WORKERS OF AMERICA

Case No. 4-R-1213.—Decided October 22, 1943

Mr. E. W. Nestor, of Lykens, Pa., for the Company.

Messrs. John Reichwein and John Gaffney, of Philadelphia, Pa.,
for District 50.

Mr. Harry Block, of Philadelphia, Pa., and *Mr. Peter Umholtz*, of
Lykens, Pa., for the U. E.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Joseph P. Nestor and Mary M. Nestor, partners d/b/a Reiff & Nestor Company, Lykens, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Lykens, Pennsylvania, on October 5, 1943. At the commencement of the hearing, the Trial Examiner granted a motion of United Electrical, Radio & Machine Workers of America, Local 135, C. I. O., herein called the U. E., to intervene. The Company, District 50, and the U. E. appeared at and participated in the hearing. 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 opportunity to file briefs with the Board.

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

52 N. L. R. B., No. 257.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Reiff & Nestor Company is a partnership engaged in the manufacture of taps and reamers at Lykens, Pennsylvania. During 1942 the Company purchased raw materials valued at about \$250,000, approximately 40 percent of which was shipped to it from points outside the State of Pennsylvania. During the same period the Company manufactured products valued at about \$850,000, approximately 75 percent of which was shipped to points outside the State of Pennsylvania. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, Local 135, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

District 50, United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 27, 1943, District 50 requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company referred District 50 to the Board.

On August 31, 1942, the Company and the U. E. entered into an exclusive collective bargaining contract. The agreement provides that it shall remain in effect until August 31, 1943, and from year to year thereafter unless notice of a desire to terminate is given by either party thereto at least 30 days prior to any annual expiration date. As stated above, District 50 made its demands upon the Company on July 27, 1943. Inasmuch as District 50 made its demands upon the Company prior to July 31, 1943, the date upon which the contract would have automatically renewed itself, we find that the contract does not constitute a bar to a determination of representatives at this time.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

¹ The Regional Director reported that District 50 presented 95 membership application cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of August 19, 1943. There are approximately 230 employees in the appropriate unit. The U. E. did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

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 parties agreed at the hearing that all production and maintenance employees of the Company, including working foremen, watchmen, and guards, but excluding supervisory employees, foremen, and office clerical employees, constitute an appropriate unit.

The Company employs persons classified by it as working foremen and subforemen. The record indicates that such employees have the authority to effectively recommend changes in the status of employees. Accordingly, we shall exclude them from the unit.

We find that all production and maintenance employees of the Company, including watchmen and guards,² but excluding office clerical employees, foremen, working foremen, subforemen, and any other supervisory employees who have 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 means of 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.

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 Joseph P. Nestor and Mary M. Nestor, partners, d/b/a Reiff & Nestor Company, Lykens, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the

² The guards and watchmen are not militarized nor are they armed or uniformed.

date of this Direction, under the direction and supervision of the Regional Director for the Fourth 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 who have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by District 50, United Mine Workers of America, or by United Electrical, Radio & Machine Workers of America, Local 135, C. I. O., for the purposes of collective bargaining, or by neither.

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