

In the Matter of ILLINOIS GEAR & MACHINE Co. and UNITED ELECTRICAL,
RADIO & MACHINE WORKERS OF AMERICA, LOCAL 1114, C. I. O.

Case No. 13-R-1962.—Decided October 28, 1943

Pope & Ballard, by *Mr. Ernest S. Ballard*; and *Messrs. T. S. Pacer*
and *E. C. Wilson*, of Chicago, Ill., for the Company.

Messrs. Robert Foley, Louis Torre, Richard Keith, Zygfried Flowers,
and *H. McCully*, of Chicago, Ill., for the C. I. O.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio & Machine Workers of America, Local 1114, affiliated with the Congress of Industrial Organizations, herein called the C. I. O.,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of Illinois Gear & Machine Co., Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Ackerberg, Trial Examiner. Said hearing was held at Chicago, Illinois, on October 4, 1943. The Company and the C. I. O. appeared and participated.² 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.

¹ The petition and other formal papers were amended at the hearing to show the correct name of the petitioning union.

² Igamco Employees Association, herein called Igamco, also served with notice, did not appear at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Illinois Gear & Machine Co. is engaged in the business of manufacturing and selling gears, racks, sprockets, and machine parts at Chicago, Illinois. During the year ending September 30, 1943, the Company purchased raw materials, consisting of steel, iron, bronze, and coal valued in excess of \$500,000, of which approximately 10 percent was shipped to its Chicago plant from places outside Illinois. During the same period the sales value of products finished at the Company's plant exceeded \$1,000,000, of which approximately 60 percent represented products shipped from the plant to places outside Illinois.

The Company admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers of America, Local 1114, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 17, 1943, the C. I. O. advised the Company that the C. I. O. represented a majority of the Company's employees and requested a conference with the Company. On August 2, the Company refused to meet with representatives of the C. I. O., on the ground that the Company recognized Igamco as exclusive bargaining representative of its employees and that a contract between the Company and the Igamco constituted a bar to negotiations with the C. I. O. or any other labor organization. On August 3, the C. I. O. filed the petition in this proceeding.

On January 22, 1943, in Case No. 13-R-1604, a prior representation proceeding involving the Company's employees, Igamco, the petitioner therein, and the Company entered into an agreement for a consent election. Pursuant to this agreement, an election was conducted among the Company's employees, and on February 2, the Regional Director reported that of 375 valid ballots counted, 305 were cast for, and 70 against, Igamco. On May 15, the Company and Igamco entered into an exclusive bargaining contract effective for 1 year, with provisions for automatic renewal if the contract were not terminated at the close of that period.

On July 12, Igamco circulated among the Company's employees notices of a meeting to be held for the purpose of voting on a proposed

affiliation with the C. I. O. On July 14, at the meeting so called, employees of the Company who were present voted by secret ballot whether or not they wished to affiliate with the C. I. O. The results of the voting disclosed that 233 employees voted for, and 7 against, the affiliation.³ So far as the record discloses, Igamco had no existence subsequent to this meeting. Officers of Igamco appeared at the hearing in the instant proceeding as representatives of the C. I. O. Under these circumstances, whether or not the Company's employees are bound by terms of the contract, it is clear that they are entitled to select a new bargaining representative if they so desire.⁴ We therefore conclude and find that the contract between the Company and Igamco does not constitute a bar to a determination of representatives pursuant to the petition filed herein.⁵

A statement prepared by the Regional Director and introduced into evidence at the hearing indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate for bargaining.⁶

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 Company and the C. I. O. agree, and we find, that hourly paid production and maintenance employees at the Company's plant, including the receiving clerk, the assistant to the general shipping clerk, and clerks in the shop foreman's office, should be included in the bargaining unit. They further agree, and we find, that office and clerical employees, the general shipping clerk, foremen, the production manager, and the general superintendents should be excluded from the bargaining unit. The parties disagree with respect to assistant foremen and assistant production managers.

Assistant foremen: The C. I. O. would include assistant foremen in the bargaining unit. The Company would exclude them. Assistant foremen do the work of foremen on the evening and night shifts. They have 8 to 20 employees under their charge. They do no regular manual work. They assist operators in setting up machines and they inspect machines for new employees to operate. Employees report to assistant foremen for work assignments. Assistant foremen are paid at a rate

³ The record does not disclose how many hourly paid production and maintenance employees were then working at the plant. They numbered approximately 385 on August 15, 1943.

⁴ *Matter of Hueneme Wharf & Warehouse Company*, 39 N. L. R. B. 636.

⁵ *Matter of All Steel Welded Truck Corporation*, 37 N. L. R. B. 521.

⁶ The C. I. O. submitted 118 designations, bearing apparently genuine original signatures of employees on the Company's pay roll of August 15, 1943. Of these designations, 81 were dated in July 1943 and the remaining were undated.

There are approximately 382 employees in the appropriate bargaining unit.

equal to or higher than the rate set for the most skilled craftsmen at the plant. Assistant foremen have authority to recommend the hire and discharge of employees under them, and their recommendations are given consideration. They handle controversial matters with the superintendent. Since it appears that assistant foremen meet the test normally applied by us in determining the supervisory status of employees, we shall exclude them from the bargaining unit. We shall likewise exclude all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or to recommend such action effectively.

Assistant production managers: The C. I. O. would include, and the Company exclude, assistant production managers. Assistant production managers, or expeditors, work under the direct supervision of the production manager. They are salaried employees. Their work is largely clerical. They do no manual work. Assistant production managers direct foremen and assistant foremen in the sequence and volume of work to be performed by departmental employees. They are not directly concerned with hourly paid employees at the plant. Since assistant production managers are not hourly paid employees and their work directly concerns that of salaried foremen rather than that of the hourly paid non-supervisory employees who the parties agree generally constitute the appropriate unit, we shall exclude assistant production managers or expeditors from the unit.

The C. I. O. requested that guards and watchmen be excluded from the bargaining unit. At the time of the hearing an independent contractor supplied the Company's needs for plant protection services and the Company listed neither watchmen nor guards on its pay roll. Under these circumstances, we find it unnecessary to make any provision with respect to the inclusion of such employees in the bargaining unit.

We find that all production and maintenance employees of the Company at its Chicago plant, including the receiving clerk, the assistant to the general shipping clerk, and hourly paid clerks in the shop foreman's office, but excluding office and clerical employees, foremen, assistant foremen, the general shipping clerk, the production manager, assistant production managers, the general superintendents, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or to recommend effectively such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.⁷

⁷ Employees included in the appropriate unit were covered by the contract between the Company and Igamco.

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 of the Company in the unit found appropriate in Section IV, above, 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 Illinois Gear & Machine Co., Chicago, Illinois, 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 Thirteenth 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 of the Company 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 employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Electrical, Radio & Machine Workers of America, Local 1114, C. I. O., for the purposes of collective bargaining.

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