

In the Matter of DAVIS ENGINEERING CORPORATION and UNITED  
CONSTRUCTION WORKERS AFFILIATED WITH THE UNITED MINE  
WORKERS OF AMERICA

*Case No. 2-R-4187.—Decided November 6, 1943*

*Mr. William A. Thomas, of New York City, for the Company.*

*Mr. Michael E. Rosenstein, of New York City, for the Union.*

*Mr. Joseph W. Kulkis, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by United Construction Workers affiliated with United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Davis Engineering Corporation, Elizabeth, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Richard J. Hickey, Trial Examiner. Said hearing was held at Elizabeth, New Jersey, on October 12, 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 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Davis Engineering Corporation is a Delaware corporation operating a plant in Elizabeth, New Jersey, where it is engaged in the manufacture and sale of heat exchange equipment. The principal

raw materials used are cast iron, steel, copper, and brass. During the period of October 1, 1942, to September 30, 1943, the Company purchased over \$500,000 of raw materials, approximately 50 percent of which was shipped to the Company's plant from places outside the State of New Jersey. During the same period the value of finished products exceeded \$800,000, of which 90 percent was shipped to points outside the State of New Jersey. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

United Construction Workers, affiliated with United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about August 9, 1943, the Union requested the Company to recognize it as the exclusive bargaining representative of the employees within an alleged appropriate unit. The Company refuses to accord the Union such recognition unless and until the Union is certified by the Board.

A statement of the Regional Director of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees within the unit hereinafter found to be appropriate.<sup>1</sup>

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 agree that all maintenance, production and shipping employees, and drivers, excluding clerical employees, executive and administrative employees, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute an appropriate unit. The parties are in disagreement, however, with reference to guards, certain alleged supervisory employees, and one clerical employee.

<sup>1</sup>The statement of the Regional Director shows that the Union submitted 122 authorization cards bearing apparently genuine signatures of 110 persons whose names appear on the September 7, 1943, pay roll of the Company, which contains the names of 138 persons within the alleged appropriate unit.

In accordance with our usual practice, we shall exclude the guards because of their militarized status.<sup>2</sup>

The Company contends that employees Meisenzahl, Pretrosky, and Chingo<sup>3</sup> are not supervisory employees. The record reveals, however, that these employees have the authority to discipline or otherwise effect changes in the status of employees, or effectively recommend such action. We shall, accordingly, exclude them from the appropriate unit.

R. Simpson is employed in the Shipping Department, where he spends 40 percent of his time in the performance of clerical duties and 60 percent of his time in the receiving and shipping of goods. Although Simpson assists in the loading and unloading of trucks, the greater portion of his receiving and shipping duties involve the supervision of two or three employees regularly engaged in such work. Because the major portion of Simpson's working time entails the performance of a combination of clerical and supervisory duties, and supervisory and clerical employees have been excluded from the appropriate unit, we shall exclude him.<sup>4</sup>

We find that all maintenance, production, and shipping employees, drivers, and part-time employees, excluding clerical employees, guards, executive and administrative employees, and any 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

It is clear from the record that part-time employees are neither temporary nor seasonal employees. They are not hired for any specific period of time, but work regularly from 10 or 15 hours to 40 hours weekly. Accordingly, we find that they are eligible to vote.<sup>5</sup>

The Company contends that July 9, 1943, shall determine the eligibility date, whereas the Union desires the date of August 9, 1943. We see no reason why we should depart from our usual practice and,

<sup>2</sup> See *Matter of Dravo Corporation*, 52 N. L. R. B. 322

<sup>3</sup> At the commencement of the hearing, the parties were also in disagreement as to the supervisory status of M. Hilts, F. Richter, W. Brody, W. Brown, H. McCauley, A. Moscarelli, C. Russ, T. Shanley, and A. Eckert. During the hearing the parties agreed that M. Hilts and F. Richter were not supervisors and therefore should be included within the appropriate unit. We shall include them. They further agreed that W. Brody, W. Brown, H. McCauley, A. Moscarelli, C. Russ, T. Shanley, and A. Eckert occupied a supervisory status and should be excluded. We shall exclude them.

<sup>4</sup> The parties agreed at the hearing that R. Freckman, W. Hauser, S. Tortorigi, E. Kidd, and J. Brady were clerical employees and should be excluded. We shall exclude them.

<sup>5</sup> See *Matter of Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270, 280; *Matter of New Britain Machine Co.*, 49 N. L. R. B. 682.

accordingly, will designate the pay-roll period immediately preceding the date of our Direction of Election.

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 Davis Engineering Corporation, Elizabeth, New Jersey, 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 Second 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 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 Construction Workers, affiliated with United Mine Workers of America, for the purposes of collective bargaining.