

In the Matter of THE COOLERATOR COMPANY, and UNITED STEEL-
WORKERS OF AMERICA, LOCAL 3117, C. I. O.

Case No. 18-R-835.—Decided November 6, 1943

Messrs. T. N. McCabe and R. H. Sanford, both of Duluth, Minn.,
for the Company.

Messrs. Francis E. Labrosse, Paul B. Lee, Charles W. Sennott,
John A. McLeod, and Henry A. Burkhammer, all of Duluth, Minn.,
for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Steelworkers of America, CIO, herein called the Union,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of The Coolerator Company, Duluth, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Stephen M. Reynolds, Trial Examiner. Said hearing was held at Duluth, Minnesota, on October 8, 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 an 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

The Coolerator Company, a Minnesota corporation, with its principal office located at Duluth, Minnesota, is engaged in the manufacture

¹The Union moved at the hearing to amend all papers to show the name of the Union as United Steelworkers of America, Local 3117, C. I. O. This motion was granted by the Trial Examiner.

of ice refrigerators and various products for the War Department of the United States Government. For this purpose it operates two plants in Duluth separated by a distance of approximately 7 miles. During the past year the Company purchased raw materials for use at the above-mentioned plants valued at approximately \$3,000,000, of which about 95 percent was shipped to the Company from points outside the State of Minnesota. During the same period the sales of finished products of the Company amounted to approximately \$6,000,000, of which about 95 percent was shipped to points outside the State of Minnesota. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, Local 3117, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive bargaining representative of its clerical employees until it has been certified by the Board in an appropriate unit.

A statement of the Regional Director introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 seeks to represent a unit comprised of all office employees, including time clerks, but excluding supervisory and confidential employees. Both the Company and the Union are agreed that the secretaries to the officers of the Company, the cashier, and the traffic and credit manager, are properly excluded. A disagreement exists, however, with respect to time clerks, the printer, and certain employees whom the Company contends occupy a confidential status. We shall discuss these classifications *seriatim*.

Time clerks: The Company would exclude these employees because they do not work with the office people, are paid on an hourly basis, and keep the hours of production employees. The Union contends that they are purely clerical employees. The record reveals that they are

² The Regional Director reported that the Union submitted 22 membership application cards bearing apparently genuine original signatures and the names of persons appearing on the Company's pay roll as of September 24, 1943. Said pay roll contained the names of 33 persons in the unit hereinafter found appropriate.

on the factory pay roll and are under the supervision of the factory accountant and the pay-roll accountant. They receive their information from the foremen of the various departments and turn it over to the recording timekeeper, or time clerk, who in turn reports both to the factory accountant and to the pay-roll accountant. These employees have been excluded from the unit of production and maintenance workers who are already represented by the Union herein. Since they do not perform production work and were not included within the production unit, and since their functions are primarily clerical in nature, we are of the opinion that these employees should be included within the unit of clerical employees. Accordingly, we shall include them within the unit hereinafter found appropriate.

Secretaries: The Company would exclude secretaries to the cost accountant, assistant purchasing agent, credit and traffic manager, sales manager, purchasing agent, factory accountant, and safety director, on the ground that they are confidential employees. The record reveals that although these persons have access to confidential matters pertaining to the business of the Company, none of them has access to matters pertaining to labor relations or personnel matters. Under these circumstances we are of the opinion that they do not fall within the definition of confidential employees. We shall, therefore, include them within the unit.³

The secretary to the personnel manager, however, keeps records of the employees and has charge of the Company's war industry reports. In addition, she types and files reports on grievances which are for use of the management only. In her capacity as secretary to the personnel manager she has access to all files pertaining to labor relations. Accordingly, we are of the opinion that this employee falls within our customary definition of a confidential employee⁴ and we shall therefore exclude her.

Bookkeeper: This employee is in charge of all matters relating to cash received, bank deposits, and book entries. She helps prepare profit and loss statements and does the work of the cashier in her absence; she also issues salary checks. Her pay is higher than most of the other clericals. However, since the matters to which she has access are not concerned with labor relations and personnel problems, we are of the opinion that she should be included within the unit. We shall, therefore, include her.

Telephone operator: The Company contends that this employee should be excluded from the unit because in the course of her duties she might come into possession of information adverse to the inter-

³ See *Matter of Cincinnati Times Star Co.*; 39 N. L. R. B. 39.

⁴ See *Matter of Creamery Package Manufacturing Co.*, 35 N. L. R. B. 108; *Matter of Fairmont Creamery Co.*, 44 N. L. R. B. 191; *Matter of Chrysler Corporation*, 36 N. L. R. B. 157; *Matter of Chrysler Detroit Company*, 38 N. L. R. B. 313.

ests of the Company. However, we have frequently found that such employees do not normally obtain information of a sufficiently confidential character concerning labor relations or personnel policies to warrant their exclusion.⁵ We shall, therefore, include her within the unit.

Mail Clerk: This employee opens the incoming mail, stamps it and routes it; she also lists the cash received through the mail and prepares a detailed report of such cash, as well as purchases. We are of the opinion that her duties are not of such a sufficiently confidential nature as to warrant her exclusion from the unit. We shall, therefore, include her.

The supervisor of the tabulating department: This employee supervises four clerks who operate key punch machines and other equipment in the tabulating department. The record reveals that she has authority to recommend the hiring and discharge of the employees under her supervision. Accordingly, we shall exclude her from the unit.

The supervisor of the printing department: This employee buys printing supplies and is in charge of orders for printing. He dictates correspondence with respect to these orders and supervises the printing of weekly bulletins to salesmen and distributors. There are two employees who work under his supervision, relative to whose employment he has the power to make effective recommendations. Under these circumstances, we are of the opinion that he is a supervisory employee and shall, therefore, exclude him.

The chief pay-roll accountant and the cost accountant: These employees, although having access to various financial figures relating to the Company's business, are not concerned with any matters relating to its labor policies, nor do either of them occupy an executive position. We are of the opinion that these employees are not employed in a supervisory or confidential capacity; we shall include them within the unit.

Printer: The Union seeks to include this employee within the unit, and the Company takes no definite position with respect thereto. The record discloses that the printer performs the duties usual to this classification, setting type and running small printing presses owned by the Company. He is a member of a craft union affiliated with the American Federation of Labor. We are of the opinion that the interests and duties of this employee are not sufficiently akin to those of the clerical employees as to warrant his inclusion within a unit of such employees. Accordingly, we shall exclude him.

We find that all clerical and office employees of the Company, including time clerks, chief pay-roll accountant, cost accountant, mail

⁵ *Matter of Chrysler Corporation*, 36 N. L. R. B. 157; *Matter of Chrysler Detroit Company*, 38 N. L. R. B. 313; *Matter of Cincinnati Times Star Co.*, *supra*.

clerk, and telephone operator, but excluding secretaries to officers of the Company and the personnel manager, the cashier, credit and traffic manager, printer, and all 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 representatives which has arisen be resolved by 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 The Coolerator Company, Duluth, Minnesota, 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 Eighteenth 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 those 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 Steelworkers of America, Local 3117, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.