

In the Matter of WAGNER ELECTRIC CORPORATION and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, CIO

Case No. 14-R-773.—Decided November 11, 1943

Messrs. Milton F. Tucker and Ralph W. Boeringer, both of St. Louis, Mo., for the Company.

Messrs. Robert B. Logsdon and Joseph Cordia, both of St. Louis, Mo., for the Union.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio and Machine Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Wagner Electric Corporation, St. Louis, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry G. Carlson, Trial Examiner. Said hearing was held at St. Louis, Missouri, on October 21 and 22, 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 upon the issues. The Company made a motion at the hearing to dismiss the petition herein which the Trial Examiner referred to the Board. For reasons hereinafter stated 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 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

Wagner Electric Corporation, a Delaware corporation with its plant and principal place of business located in St. Louis, Missouri,

is engaged in the manufacture of electric products such as motors, transformers, fire control equipment, etc. During the year 1942, the Company's purchases of raw materials, consisting of steel castings, wire and other materials, exceeded \$100,000 in value, of which approximately 50 percent was transported to its St. Louis plant from points outside the State of Missouri. During the same period the Company manufactured and sold finished products valued in excess of \$100,000, of which approximately 80 percent was shipped to points outside the State of Missouri. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Local 1104, United Electrical, Radio and Machine Workers of America, 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 23, 1943, the Union filed a petition seeking to represent all employees of the Company engaged as timekeepers and expeditors.¹ On August 17, an Agreement for Cross-Check was executed by the parties and pursuant thereto, a cross-check was conducted under the supervision of the Regional Director. The results of the cross-check showed that the Union represented 47 of the 128 employees in the unit sought. Since the Union failed to demonstrate a majority status, the petition was dismissed on August 21, 1943.

On or about September 8, 1943, the Union made an oral request for recognition as the representative of a unit of employees of the Company substantially similar to those who were the subject of the cross-check agreement. The Company refused to grant such recognition on the ground that the Union had just recently been rejected as the representative of these employees. On the same date, the Union filed the petition herein.

The Company contends that the cross-check has the same effect as an election, and that it constitutes a bar to this proceeding. The Company argues, in effect, that to permit a new petition to be filed 18 days after the dismissal of a prior petition fails to give effect to the results of the prior proceeding and would unstabilize industrial relations. We do not agree. The stability in industrial relations which it is the policy of the Act to achieve is bottomed on the procedure of collective bargaining and not the absence of such bargaining. We have heretofore found that a consent election held under Board auspices in which no bargaining representative was chosen does not.

¹ Case No. 14-R-724.

constitute a bar to a current determination sought by the same petitioner when the petitioner has procured substantial additional designations in the proposed unit.² We have, heretofore, further held that such an election does not constitute a bar even though the consent election agreement was approved by the Regional Director and contained a proviso to the effect that the parties were to be bound by the results of the election for a period of at least 1 year.³ However, here no such proviso was contained in the cross-check agreement between the Company and the Union. The Union has now submitted additional designations indicating an apparently majority representation and demonstrated a substantial interest in this proceeding. We are of the opinion that a refusal to entertain a new petition at this time would defeat the rights of employees guaranteed by the Act, and would be contrary to the policy of the Act to encourage the practice and procedure of collective bargaining. Accordingly, we find that the prior cross-check does not constitute a bar to this proceeding.

Statements of the Regional Director and the Trial Examiner introduced into evidence at the hearing indicate that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

Substantially in accordance with the agreement of the parties, we find that all factory clerical employees of the Company, including factory time clerks, expeditors, production clerks,⁵ but excluding general office and clerical employees wherever employed,⁶ supervisory employees with authority to hire, promote, discharge, discipline, or

² See *Matter of Chrysler Corp.* 37 N. L. R. B. 877; also *Matter of New York Central Iron Works*, 37 N. L. R. B. 894; *Matter of Detroit Nut Company*, 39 N. L. R. B. 739

³ *Matter of Automatic Products Co.* 40 N. L. R. B. 941.

⁴ The Regional Director reported that the Union submitted 76 designations of which 68 bore the apparently genuine original signatures of persons appearing on the Company's pay roll of August 15, 1943. Said pay roll contained the names of 128 persons within the appropriate unit.

The Trial Examiner, at the hearing, reported that the Union had submitted 26 additional designations bearing apparently genuine original signatures; and that these designations indicated that the persons whose names appeared thereon were employed by the Company as cost clerks, stock clerks, production clerks, and typist clerks, and expeditors. Each of these classifications is included within the unit herein sought by the Union. According to the Company, the appropriate unit contains approximately 132 persons.

⁵ "Production clerks" includes (a) clerks in the transformer shop in Building 1, (b) clerks, typist clerks, and store room record clerks in Building 18, (c) Amphledyne clerks in Building 17, and (d) clerks in the large motor shop.

⁶ Because of lack of space, some general office employees are located outside the general office.

otherwise effect changes in the status of employees, or effectively recommend such action, and all other employees of the Company constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁷

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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.⁸

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of 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 Wagner Electric Corporation, St. Louis, Missouri, 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 Fourteenth 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 Local 1104, United Electrical, Radio and Machine Workers of America, CIO, for the purposes of collective bargaining.

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

⁷ See *Matter of Union Carbide and Carbon Co.* 46 N. L. R. B. 1107.

⁸ The Union requested that it be designated on the ballot as "Local 1104, United Electrical, Radio & Machine Workers of America, CIO." This request is hereby granted.