

In the Matter of NIAGARA BLOWER COMPANY and INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 576

Case No. 3-R-677.—Decided November 22, 1943

Messrs. Kenefick, Cooke, Mitchell, Bass & Letchworth, by L. F. Kirk, of Buffalo, N. Y., for the Company.

Mr. George E. Mintzer, of Snyder, N. Y., for the Union.

Miss Olive N. Barton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Bridge, Structural and Ornamental Iron Workers, Local 576, herein called the Union; alleging that a question affecting commerce had arisen concerning the representation of employees of Niagara Blower Company, Buffalo, New York, herein called the Company, the National Labor Relations Board, provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on October 28, 1943. The Company and the Union¹ 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

Niagara Blower Company, a New York Corporation, is engaged at its only plant in Buffalo, New York, in the manufacture of special,

¹The American Federation of Labor, also served with notice, did not appear.

custom built, industrial heating and cooling equipment for precision air-conditioning requirements in industry. During the 3 months preceding the hearing, about \$60,000 worth of raw materials was shipped to the plant from points outside the State of New York. During the same period, about \$200,000 worth of finished products was sold and shipped from the plant to points outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

International Association of Bridge, Structural and Ornamental Iron Workers, Local 576, is a labor organization admitting to membership employees of the Company.²

III. THE QUESTION CONCERNING REPRESENTATION

On September 28, 1943, the Union, claiming to represent a majority, requested the Company to enter into collective bargaining relations with it on behalf of certain employees in the Company's plant. At a conference on October 1, 1943, the Company refused, pending Board certification.

A statement of the Field Examiner, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees within the unit herein found appropriate.³

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 mainly agree as to the appropriate unit. The only question is as to the 9 working foremen who supervise from 2 or 3 to 18 men each, laying out the work, telling the employees the order in which to perform it, and generally directing the performance of the work. The Union contends that these 9 men should be included in the bargaining unit, and the Company, while not taking a decided stand, points out that since their duties are supervisory they should be excluded. The evidence shows, and we find, that these 9 working

² The United Steel Workers of America (CIO) had on April 12, 1937, negotiated a contract with the Company, which was never administered. The Union became inactive immediately after the contract was drawn. At the hearing the Trial Examiner stated for the record that the United Steelworkers informed the Board's Field Examiner before the hearing that it had no interest in the present proceeding.

³ The Field Examiner reported that the Union submitted 39 applications for membership, of which 38 have apparently genuine original signatures corresponding with names on the Company's pay roll of September 29, 1943, which pay roll contains the names of 61 persons in the alleged appropriate unit. Three of the cards are undated, and 35 are dated September 1943.

foremen have authority effectively to recommend hiring, discharge, and changes in status, such as raises in pay, of the men under them. We find, therefore, that they are supervisory employees and should be excluded from the unit.

Accordingly, we find that all production and maintenance employees of the Company, excluding office and clerical employees, watchmen, plant-protection guards, working foremen, 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

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 payroll 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 Niagara Blower Company, Buffalo, New York, 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 Third 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 payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 International Association of Bridge, Structural and Ornamental Iron Workers, Local 576, for the purposes of collective bargaining.