

In the Matter of MANNING, MAXWELL & MOORE, INC. and UNITED  
ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, CIO

*Case No. 2-R-4149.—Decided November 29, 1943*

*Pullman & Comley, by Mr. Arthur M. Comley, of Bridgeport, Conn., for the Company.*

*Messrs. Henry Johnson, Charles Rivers and William De Francisco, of Bridgeport, Conn., for the CIO.*

*Mr. Sidney A. Johnson, of Bridgeport, Conn., for the Independent.*

*Miss Frances Lopinsky, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio and Machine Workers of America, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Manning, Maxwell & Moore, Inc., Bridgeport, Connecticut, 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 Bridgeport, Connecticut, on October 18, 1943. The Company, the CIO, and Bridgeport Manning, Maxwell & Moore Employees Union, Inc., herein called the Independent, appeared and participated. 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 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

Manning, Maxwell & Moore, Inc., is a New Jersey corporation with its principal office located in the Chrysler Building in New York

City. It maintains and operates sales offices and plants in cities throughout the United States. This proceeding concerns its plant in Bridgeport, Connecticut, where it is engaged in the manufacture of valves, gages, and instruments including thermometers, controllers, and airplane instruments. The principal raw materials purchased and used by the Company at its Bridgeport, Connecticut, plant are copper base ingot, nickel, aluminum, steel, brass and bronze rods and sheets, steel tubing, carbon, alloy steel, grey iron and malleable iron castings. During the yearly period ending on or about September 2, 1943, the Company used raw materials valued in excess of \$1,000,000, approximately 75 percent of which was sold and shipped to it from places outside the State of Connecticut. During the same period, the Company, at its Bridgeport plant, manufactured and produced finished products valued in excess of \$1,000,000, approximately 90 percent of which was sold and shipped by it to places outside the State of Connecticut.

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

## II. THE ORGANIZATIONS INVOLVED

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

Bridgeport Manning, Maxwell & Moore Employees Union, Inc., is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The CIO, by letter dated July 2, 1943, requested recognition as sole bargaining representative for the Company's employees. The Company replied, denying recognition because of an existing contract between the Company and the Independent. The said contract was terminated September 30, 1943, and there is no allegation that a contract presently exists.

A statement of the Regional Director, introduced into evidence, and uncontradicted testimony presented at the hearing indicate that the CIO and the Independent each represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

<sup>1</sup> The Regional Director reported that the CIO submitted 602 authorization cards, 456 of which bore apparently genuine original signatures corresponding with names of persons listed on the Company's pay roll of August 28, 1943, which contained the names of 1,560 employees in the appropriate unit; that most of the cards were dated in the months of May through August 1943.

The Independent, pursuant to a voluntary check-off of 50 cents per person per month received from the Company \$220 00 for September 1943 dues and \$268.50 for October 1943 dues.

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

Except for the two categories of employees herein discussed, all of the parties are in agreement that the production and maintenance unit hereinafter described is appropriate for purposes of collective bargaining. The two categories in dispute are timekeepers and set-up men whom the Company and the Independent would include and the CIO would exclude.

*Timekeepers:* There are 30 timekeepers. They work in the factory, each in a specific department, but they are responsible to the head timekeeper and not to the foremen of the departments in which they work. The head timekeeper reports to the Works Accountant. The duties of the timekeepers are to see that the employees punch their time cards, to record the number of hours which the time cards indicate the employees have worked, to record the amount of work performed by each employee during a particular day, and to record the time that each particular employee spends upon a particular piece or operation. They have been bargained for by the Independent since 1937, but since their work is purely clerical in nature, we shall exclude them from the unit.<sup>2</sup>

*Supervisors or set-up men:* At the hearing, the Company introduced into evidence two lists of names, the first headed "Supervisory Employees who have power to hire or fire or direct promotions or terminations and exercise disciplinary action," the second headed "Supervisory Employees who do not have the power to hire or fire." All parties agree that persons listed in the first-named list should be excluded from the unit. Those listed in the second list are experienced employees who before the rapid expansion of the plant worked on a piece-work rate at the bench. As "supervisors", they are paid the average daily rate they earned as piece workers. They set up tools for new employees and instruct them in the operation of the machines. The groups which they supervise comprise from 4 to 10 employees, both new and experienced. They assign work to the men working under them, but in this activity they are merely carrying out instructions of their respective foremen. Some of the experienced operators earn more money than the "supervisors" and for this reason "supervisors" sometimes return to the bench. The supervisors make reports on the progress of the new men and on facts requiring discipline, but any action taken with regard to these matters is taken on the independent opinion of the foremen in charge. This group of employees has been bargained for by the Inde-

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<sup>2</sup> See *Matter of Bendix Aviation, Ltd.*, 52 N. L. R. B. 182, and cases cited therein; *Matter of National Tool Co.*, 51 N. L. R. B. 897.

pendent since 1937. They are not considered "bosses" by the experienced men under them, some of whom have held and voluntarily relinquished such positions. To the inexperienced workers they are instructors<sup>3</sup> and set-up men. The Company does not instruct them to make recommendations concerning their groups of employees. The Company has a hierarchy of supervisors above these men to whom it looks for opinions in making changes in personnel. It does not consider these men part of management. We find that "supervisors" or set-up men are production employees equal in status with other production employees and shall include them in the unit.<sup>4</sup>

We find that all production workers, maintenance workers, tool makers, machinists, hourly rated inspectors, hourly rated laboratory experimental employees, and "supervisors" or set-up men of the Company, but excluding weekly salaried factory clerks, hourly rated factory clerks, laboratory employees, weekly salaried inspectors, draftsmen, office workers, time-study men, guards, part-time employees working consistently less than 32 hours per week, the instructors, Norkel and Gregory, timekeepers 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 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.

#### 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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Manning, Maxwell

<sup>3</sup> There are two instructors, Norkel and Gregory, whose classes the new employees attend prior to the time they are put on the production line under the tutelage of the "supervisors." All parties agree that these two instructors shall be excluded from the appropriate unit.

<sup>4</sup> See *Matter of Fajnr Bearing Co.*, 47 N. L. R. B. 278. Cf. *Matter of High Standard Manufacturing Co., Inc.*, 48 N. L. R. B. 706, in which the set-up men had real supervisory authority. The duties and authority of the "supervisors" herein discussed are more comparable to those of the tool makers in the *High Standard* case, and of the key men in *Matter of Victor Chemical Co.*, 52 N. L. R. B. 194.

& Moore, Inc., Bridgeport, Connecticut, 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 these employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the election, to determine whether they desire to be represented by United Electrical Machine Workers of America, affiliated with the Congress of Industrial Organizations, or by Bridgeport Manning, Maxwell & Moore Employees Union, Inc., for the purposes of collective bargaining, or by neither.