

In the Matter of DUKE MANUFACTURING COMPANY *and* AMERICAN
FEDERATION OF LABOR AND ITS AFFILIATED INTERNATIONAL UNIONS

Case No. 14-R-793.—Decided December 8, 1943

*Messrs. Wallace Cooper and M. P. Duke, both of St. Louis, Mo.,
for the Company.*

Mr. John R. Barr, of St. Louis, Mo., for the A. F. of L.

Mr. Thomas M. Conway, of St. Louis, Mo., for the Weldors.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by American Federation of Labor and its Affiliated International Unions, and International Association of Machinists, District No. 9,¹ herein called the A. F. of L., alleging that a question affecting commerce has arisen concerning the representation of employees of Duke Manufacturing Company, St. Louis, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Ruth C. Hutchinson, Trial Examiner. Said hearing was held at St. Louis, Missouri, on November 5, 1943. The Company, the A. F. of L., and United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, herein called the Weldors, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. During the course of the hearing, the A. F. of L. made a motion to dismiss the request of the Weldors to participate in an election which the Trial Examiner referred to the Board. For reasons hereinafter stated the motion is hereby granted. 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.

¹At the hearing, the Trial Examiner granted a motion to eliminate "International Association of Machinists, District No. 9," from the name of the petitioner since the International Association of Machinists is now affiliated with the American Federation of Labor.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Duke Manufacturing Company, a Missouri corporation with its office and sole place of business located in St. Louis, Missouri, is engaged in the manufacture and distribution of hotel and hospital kitchen equipment. During 1942, the Company purchased raw materials valued at approximately \$150,000, of which about 75 percent was shipped to the Company's plant from points outside the State of Missouri. During the same period, the Company manufactured finished products valued at approximately \$400,000, of which about 90 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 ORGANIZATIONS INVOLVED

American Federation of Labor and its Affiliated International Unions are labor organizations, admitting to membership employees of the Company.

United Brotherhood of Welders, Cutters & Helpers of America, Local No. 15, is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the labor organizations herein unless and until the Board has certified them as the representative of its employees in an appropriate unit.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the A. F. of L. 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.

²The Regional Director reported that the A. F. of L. submitted 36 designations of which 30 bore apparently genuine original signatures of persons whose names appear on the Company's pay roll for the period ending September 29, 1943; that said pay roll contained the names of 34 persons within the appropriate unit.

He further reported that the Welders submitted 4 designations all of which bore apparently genuine original signatures and the names of persons appearing upon the aforementioned pay roll; that said pay roll contains the names of 5 persons who appear to be in the unit which the Welders seeks to represent. However, the Regional Director further stated that the Company employs 11 persons who perform welding operations

IV. THE APPROPRIATE UNIT

Both the Company and the A. F. of L. contend that the appropriate unit should include all production and maintenance employees of the former, including welders, and shipping and receiving department employees, but excluding office and clerical employees, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or recommend such action. The Weldors seeks to represent a unit comprised solely of employees of the Company engaged as welders, who spend more than half of their time performing such work.

The Company is a comparatively small concern engaged in the manufacture of articles in small quantities on order. Because of the nature of its products, the Company does not operate an assembly or production line, but requires each employee to perform as much of the various types of work required in manufacturing a particular product as the individual employee's capacity permits. Thus, each of the production and maintenance employees may be assigned work other than that called for under their particular job classification, i.e., welders may perform assembly or grinding work in addition to their welding; sheet metal workers may be required to operate welding machines, and so on. Furthermore, there is no segregation of employees according to the classifications under which they are hired, and the Company, of necessity, shifts its employees from and to various types of production and maintenance work in order to achieve their greatest possible productive capacity, and to achieve continuity of production. All production and maintenance employees are under the supervision of a single shop foreman who assigns the various tasks. The entire shop is, at the present time, under the same roof, with small partitioned additions thereto for painting and sandblasting operations, and working conditions are the same for all employees throughout the shop. Under these circumstances, we are of the opinion that a separate unit of welders is inappropriate and that the interest of all employees, including welders, will best be served by the establishment of an industrial unit.³

The Company employs 14 men in a group of approximately 34 production and maintenance employees, who, because of their experience and skill, are placed in charge of particular jobs, and have some voice in the choice of assistants who work along with them. These employees are responsible for the results of the particular job to which they are assigned, and are not concerned with the supervision of their

³ See *Matter of Port Houston Iron Works*, 46 N. L. R. B. 155, wherein the Board included within an industrial unit those persons engaged as welders because of the fact that they were not physically segregated from the remaining employees, under separate supervision, or engaged in specialized operations.

assistants, except for the purposes of directing or instructing them. Moreover, instances have occurred where these highly skilled employees have worked under each other's direction on a particular job. We are of the opinion and find that these employees do not have status as supervisory employees; we shall therefore include them.

We find that all production and maintenance employees of the Company, including welders and the shipping and receiving department, but excluding office and clerical employees, watchmen, 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.⁴

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 Duke Manufacturing Company, 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

⁴ The A. F. of L. requested that it be designated on the ballot as "The American Federation of Labor and its affiliated International Unions." We are of the opinion that in the absence of showings of representation by particular International affiliates such designation is too indefinite for purposes of certification. We shall therefore designate the A. F. of L. on the ballot simply as "American Federation of Labor." In view of our finding herein that the unit sought by the Welders is inappropriate, we shall not grant it a place upon the ballot.

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 the American Federation of Labor for the purposes of collective bargaining.