

In the Matter of SHEPARD NILES CRANE AND HOIST CORPORATION and
INTERNATIONAL ASSOCIATION OF MACHINISTS

Case No. 3-R-675.—Decided December 10, 1943

Mr. James L. Burke, of Elmira, N. Y., for the Company.

Mr. C. W. Fairfield, of Elmira, N. Y., for the Union.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Shepard Niles Crane and Hoist Corporation, Montour Falls, 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 Elmira, New York, on November 9, 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

Although the record in the instant proceeding contains little evidence describing the Company or the nature of its business, evidence on the matter was elicited at a previous hearing held on November 19, 1942, in Case No. III-C-113, pursuant to charges of unfair labor practices against the Company.¹ The evidence at that hearing, of

¹ The Company offered no evidence of jurisdictional facts at the hearing, but raised no objection when the Trial Examiner indicated that the Board would ascertain these facts from the evidence in the complaint proceeding.

which we take notice, established that Shepard Niles Crane and Hoist Corporation is a New York corporation with its principal place of business at Montour Falls, New York. The Company is engaged in the manufacture and sale of crane, hoist machinery, and other kinds of machinery and kindred articles. From January 1, 1942, to November 15, 1942, the Company purchased raw materials valued at approximately \$1,000,000, about 20 percent of which was shipped to the Company's plant from points outside the State of New York. During the same period the Company manufactured finished products valued at more than \$5,000,000, approximately 70 percent of which was shipped from the Company's plant to points outside the State of New York.

At the hearing in the instant proceeding the Company admitted and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that the Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's employees until the Union has been certified by the Board indicating that it doubts the alleged majority status of the Union.

A statement of the Field Examiner for the Board, 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 contends that all production and maintenance employees including shipping and receiving clerks, but excluding office employees, Bedeaux clerks, dispatch clerks, record clerks, and all supervisory employees, constitute an appropriate bargaining unit. The Company

²The Field Examiner reported that the Union submitted 157 authorization cards bearing apparently genuine signatures of persons listed on the Company's pay roll of September 18, 1943, which contained the names of 405 employees in the appropriate unit. We find the Company's contention that the Union has failed to make a substantial showing of representation, to be without merit.

took no position at the hearing with reference to the appropriateness of the unit sought by the Union, but in its brief urges that all shop clerks should be excluded from the unit.

The Company's operations are divided into three principal production divisions, the bridge shop, machine shop, and motor department. A general maintenance department handles all problems of plant maintenance and repair, employees in that department frequently helping production employees in the course of their work. The shipping and receiving clerks are essentially manual laborers, handling incoming and outgoing materials. The Bedeaux clerks, dispatch clerks, and record clerks perform duties which are essentially clerical in character and are under the supervision of the general office. We find that the unit proposed by the Union which includes shipping and receiving clerks and excludes the other shop clerks, is appropriate for the purposes of collective bargaining.

We find that all production and maintenance employees of the Company at its plant at Montour Falls, New York, including shipping and receiving clerks, but excluding office employees, Bedeaux clerks, dispatch clerks, record clerks, 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

Since the filing of the petition in the instant proceeding, the Company has laid off a substantial number of employees and a substantial number have left voluntarily. Many of these persons have obtained employment elsewhere or gone into military service. Contending that the laid off employees should be permitted to vote, the Union requests that eligibility to participate in the election be determined on the basis of the pay roll as of the time of the filing of the petition. We do not consider the circumstances as warranting a departure from our customary practice in this matter; under our Direction of Election, employees temporarily laid off, as distinguished from those who have quit or have been discharged for cause, are eligible to vote.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Shepard Niles Crane and Hoist Corporation, Montour Falls, 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 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 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 International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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