

In the Matter of EMERSON RADIO & PHONOGRAPH CO. and FEDERATION OF ARCHITECTS, ENGINEERS, CHEMISTS AND TECHNICIANS—C. I. O. CH. No. 31

Case No. 2-R-4211.—Decided December 16, 1943

Chadbourne, Hunt, Jaeckel & Brown, by Mr. Newton D. Crane, of New York City, for the Company.

Mr. Thomas R. Sullivan, of New York City, for the Federation.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Federation of Architects, Engineers, Chemists and Technicians—C. I. O., Chapter No. 31, herein called the Federation, alleging that a question affecting commerce had arisen concerning the representation of employees of Emerson Radio & Phonograph Co., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Davis, Trial Examiner. Said hearing was held at New York City on November 2, 3, and 6, 1943. The Company and the Federation appeared, participated, and were afforded an opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company's motions to dismiss are overruled for reasons herein-after stated. 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

Emerson Radio & Phonograph Co. is a corporation having its principal office and place of business in New York City, where it is

¹ While the United Electrical, Radio & Machine Workers of America, herein referred to as the UE, was not served with notice of hearing and filed no formal appearance as a party to the proceeding, a representative of the UE participated in the hearing as a witness for the Federation.

engaged in the manufacture of radios and electronic equipment. The Company obtains annually from points outside the State of New York and for use at its New York City plant, raw materials having a value in excess of \$1,000,000. The value of the products shipped by the Company from its New York City plant to points outside the State of New York is also in excess of \$1,000,000 annually.

II. THE ORGANIZATION INVOLVED

Federation of Architects, Engineers, Chemists and Technicians, Chapter No. 31, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 12, 1943, the Federation requested in writing that the Company recognize it as exclusive bargaining representative for laboratory workers employed by the Company. After numerous meetings at which the Company, the Federation, and the UE, conferred with the object of attempting to reach an agreement upon the categories of employees represented by the several unions, the Company declined to continue further with the matter upon the ground that to discuss the laboratory workers would be a breach of the secrecy requirements of the Army and Navy authorities with which the Company is under contract.

A statement of the Regional Director, together with other evidence introduced at the hearing, indicates that the Federation 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 2 (6) and (7) of the National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The Federation contends that all engineering and technical employees of the Company, including apprentices, tracers, draftsmen, blueprint operators, laboratory helpers, laboratory assistants, labora-

² The Regional Director reported that the Federation had submitted 58 application-for-membership cards dated between March and August 1943, including 21 undated, all of which bore the apparently genuine original signatures of persons in a claimed appropriate unit of approximately 100 employees. The Regional Director further reported that the Company had been requested to submit a list of employees but that none had been submitted to date.

The Trial Examiner reported that at the hearing the Company had submitted a pay-roll list containing the names of 109 employees in the claimed appropriate unit as of October 23, 1943, and referred to by the company witness as laboratory employees. The Trial Examiner further reported that the Federation had presented at the hearing 66 membership cards dated between March and September 1943, of which 55 bore the names of those who appeared on the pay-roll list of the Company.

tory technicians, engineering assistants, student engineers, junior engineers, assistant engineers, and associate engineers, but excluding department heads, senior engineers, production, clerical, and maintenance employees, constitute a unit appropriate for collective bargaining. The Company, on the other hand, maintains that the proposed unit, in effect a unit of laboratory workers, is inappropriate upon the grounds (1) that the plant has been organized by the UE upon a plant-wide basis including both laboratory and production employees, and (2) that there is no clear division between the duties and functions of the laboratory employees in question and those of the general production employees.

With respect to the history of collective bargaining in relation to the question of the appropriate unit, it appears that while the Company, under date of May 10, 1941, had executed a contract with the UE which it is claimed indicates the appropriateness of a plant-wide unit including both technical and production employees, an inspection of the contract relied upon discloses that it does not provide for recognition of the UE as exclusive representative of all such employees, but is merely a temporary agreement between the Company and the UE as representative of its own members, having as its principal objective the termination of a then existing strike! The agreement provides for the arbitration of future grievances on the part of the UE pending certification by the Board of some labor organization as the sole and exclusive bargaining agent for the employees concerned,³ and that the Company will not enter into any contract with any labor organization unless and until such labor organization has been certified by the Board as representing the majority of the Company's employees. Moreover, while the contract makes no reference to any particular categories of employees, the uncertainty of the coverage thereby intended was subsequently resolved in part by an agreement between the Company and the UE for a cross-check under a petition filed by the UE with the Board in March of 1943, at which time the Company proposed and the UE agreed that employees under the general classification of laboratory workers should be excluded from the group represented by the UE.

There remains for consideration the further contention of the Company that there is no clear line of division between the employees in the proposed unit and the production employees generally as represented by the UE. The contention is, however, not supported by

³ While the UE originally began its organizing campaign by admitting to membership both laboratory and production employees of the Company, it had never presented any grievances for settlement on behalf of the laboratory workers, though it has presented grievances on behalf of the production employees. The UE has, moreover, formally conceded to the Federation all jurisdiction over the laboratory employees herein claimed as the basis of the appropriate unit.

the evidence as to the functions and responsibilities of the respective groups herein concerned.⁴ The record shows that, production employees as a class, perform one or a series of repeated operations with respect to radio equipment in the process of production, without responsibility for the successful completion of the product as a whole. On the other hand, it is clear that technical or laboratory employees are distinguishable from production employees in that the former are required to use their own judgment and initiative in the building or testing of radio equipment and are responsible for the effectiveness of the results thereby achieved. The difference in ability and skill of the two groups is indicated by the fact that while there are varying degrees within each category, the minimum wages for production employees doing routine wire and assembly work is \$20 a week, while the minimum for assistant engineers, who also do wiring but from schematic drawings, is \$35 a week.⁵ So far as interchange of employees between the engineering and production groups is concerned, it appears that transfers have been mainly from the engineering group to supervisory positions among the production employees.⁶ The latter have apparently few, if any, social relations with the engineering group other than occasional contacts in connection with the use of equipment or the delivery of material between plant and laboratory. Although employees in the engineering and laboratory groups have responsible duties in connection with the Company's operations, there is no claim that any of such employees should be denied the right of representation as supervisory employees or that they are any way concerned with labor relations. Moreover, the mere fact that the work done by the employees within the proposed unit may be limited to the duration of the present war, does not deprive

⁴ The present overlapping of groups and the confusion resulting therefrom appears to be largely the result of the Company's recent attempt to place its engineering and laboratory personnel into functional categories corresponding to similar groups existing among the production employees. The artificiality of this method of classification is indicated by the admission of the Company that up until the beginning of negotiations with the petitioner there had been no necessity for preparing a list of functional classifications for laboratory employees. Moreover, it appears that throughout the conferences between the Company, the Federation, and the UE, the Company's representative took the position that he would much prefer to have but one union in the plant.

⁵ The Company's contention that the 36 persons referred to by the Company as having pay-roll classification of engineers of one grade or another but whose functional duties are wiring and assembling, are indistinguishable from production employees, is without merit. Witnesses for the Federation testified that the group of 36 actually do engineering work; that when hired they were queried as to their experience and technical knowledge; and that their duties require the submission of engineering reports. Several of the witnesses testified as to their knowledge and technical training and that their duties are confined to engineering work. We find that they are engineering employees to be included within the appropriate unit.

⁶ The Company claimed at the hearing that "a couple of dozen" transfers had occurred between the plant and the proposed unit during the past year. The evidence offered by the Company did not, however, specify the proportion of transfers in either direction. The testimony of witnesses for the Federation was to the effect that there have been substantially no transfers other than transfers of engineering employees to supervisory factory positions.

such employees of the right to bargain collectively upon the ground that they occupy the status of temporary employees.⁷

We find that all engineering and laboratory employees, student engineers, junior engineers, assistant engineers, and associate engineers, including draftsmen, blueprint operators, laboratory assistants, laboratory technicians, supervisors,⁸ trouble shooters, raw material inspectors,⁹ and chemists, within the functional and pay-roll classifications listed in Schedule A, annexed hereto, but excluding clerical employees, senior engineers, department heads, 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.¹⁰

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 Emerson Radio & Phonograph Co., New York City, 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

⁷ See *Matter of The Hoosier Crown Corporation*, 51 N. L. R. B. 1353. The fact that laboratory employees are engaged in war work is immaterial so far as their right of collective bargaining is concerned. See *Matter of Bendix Products Division of the Bendix Aviation Corporation*, 43 N. L. R. B. 912.

⁸ By the term "supervisors" is meant a group of 16 engineering employees referred to as "supervisors." These employees spend part of their time instructing production employees in the plant, but otherwise have no supervisory authority.

⁹ These employees are classified as assistant engineers and perform technical work in the inspection of incoming material.

¹⁰ See *Matter of Bull Dog Electric Products Co.*, 22 N. L. R. B. 1042; *Matter of Bendix Products Division of the Bendix Aviation Corporation*, 43 N. L. R. B. 912; *Matter of The Permanente Metals Corporation*, 45 N. L. R. B. 931.

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 Federation of Architects, Engineers, Chemists and Technicians—C. I. O., Chapter No. 31, for the purposes of collective bargaining.

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

SCHEDULE A

Associate—Packing Engineer.	Associate Draftsman.
Assistant—Wiring and Assembly.	Student Draftsman.
Associate—Wiring and Assembly.	Student Draftswoman.
Junior—Wiring and Assembly.	Assistant Trouble Shooter.
Associate—Wiring and Developing.	Associate Trouble Shooter.
Assistant—Wiring and Developing.	Associate Project Engineer.
Associate—Wiring, Special.	Associate—Contract Engineer.
Assistant Supervisor.	Associate Special Engineer.
Associate Supervisor.	Associate—Chemist.
Assistant Draftswoman.	Assistant—Laboratory Assistant.
Junior Draftswoman.	Student—Blue Prints.
Junior Draftsman.	Assistant—General.
Assistant Draftsman.	Assistant—Raw Material Inspection.