

In the Matter of WARNER ELECTRIC BRAKE COMPANY and UNITED
STEELWORKERS OF AMERICA, C. I. O.

Case No. 13-R-2124.—Decided January 12, 1944

Mr. John Patterson Currie, of Chicago, Ill., and Mr. Frank B. Zander, of Beloit, Wis., for the Company.

Mr. Meyer Adelman, of Milwaukee, Wis., and Mr. W. O. Parker, of Beloit, Wis., for the Union.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Warner Electric Brake Company, South Beloit, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon A. Rosell, Trial Examiner. Said hearing was held at Beloit, Wisconsin, on November 23, 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.¹ 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 FACTS

I. THE BUSINESS OF THE COMPANY

Warner Electric Brake Company is engaged in the manufacture of electric brakes and controls at South Beloit, Illinois. The Com-

¹ On November 12, 1943, United Automobile Workers of America, C. I. O., filed in the Regional Office a waiver and disclaimer of interest in this proceeding.

pany annually purchases materials valued at approximately \$2,000,000, of which approximately 50 percent is shipped to its plant from points outside Illinois. The Company annually ships from its plant finished products valued in excess of \$5,000,000, of which approximately 80 percent is shipped from the plant to points outside Illinois.

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

II. THE ORGANIZATION INVOLVED

United Steelworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about April 20, 1943, and thereafter, the Union asked the Company for recognition as sole bargaining representative of the Company's employees. The Company refused so to recognize the Union until it was certified by the Board.

A statement prepared by the Regional Director and introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit herein found appropriate for bargaining.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 Company and the Union agree, and we find, that production and maintenance employees, including leadmen and set-up men,³ should be included in the bargaining unit. They further agree, and we find, that office and plant clerical employees, technical employees in the main office, timekeepers, watchmen, militarized guards, plant superintendent, assistant superintendent, senior foremen, junior foremen,⁴ assistant foremen, and the supervisor of women should be excluded from the bargaining unit. The Company and the Union disagree with respect to subforemen. The Union would include all

² The Union submitted to the Regional Director 229 authorization cards, bearing dates between March and November 1943, and apparently genuine original signatures of employees on the Company's pay roll of October 28, 1943.

There are approximately 656 employees in the appropriate bargaining unit.

³ Leadmen and set-up men, as such, do not have any supervisory authority within the Board's usual definition of that term. Four assistant foremen (Bernard VonDervellen, Henry Veltmeyer, Delbert Tregoning, and Cornelius Mahoney) do some set-up work, but no production work. As assistant foremen, they are deemed excluded from the unit.

⁴ Two junior foremen (Thorval Therkelsen and Harold Minnick) do some production work. As junior foremen, they are deemed excluded from the unit.

subforemen in the bargaining unit. The Company contends that three subforemen, who devote 60 to 75 percent of their time to supervisory work, should be excluded from the unit.

Subforemen are in charge of production lines in the assembly department, including 7 to 20 employees on each line. Subforemen do production work in varying amounts. They assign work, they give instructions, and they relieve men on the line. All of them do some supervisory work and they receive higher wages than ordinary production employees on the line. There are differences in the rates of pay among the subforemen, in proportion to the amount of their supervisory duties. While all subforemen may make recommendations with respect to the discharge or discipline of employees under them, little or no weight is given to their recommendations except to those of Leo Spangler, Lawrence Dietsch, and Thomas McMillan. These three employees are classed as subforemen and spend in excess of 50 percent of their time on supervisory duties and the remainder of their time on production work. They work under a foreman who has general charge of approximately 116 employees. It appears that subforemen as a class are not supervisory employees within the Board's usual definition of that term. Spangler, Dietsch, and McMillan, however, although classed with other subforemen by the Company, are rated more highly than others and the Company accords to their recommendations considerable weight. We therefore shall include in the bargaining unit subforemen as a class and shall exclude from the unit all subforemen and other employees who fall within our usual definition of supervisory employees.⁵

The Company would exclude, and the Union would include, inspectors. The Company contends that inspectors are confidential employees and should not be included in the bargaining unit with ordinary production and maintenance employees. Inspectors are engaged in the operation of approving or rejecting manufactured parts. They have no authority to hire or discharge employees or to recommend effectively hire, discharge, or discipline, nor are inspectors connected with the Company's labor relations department. We shall include them in the bargaining unit.⁶

We find that all production and maintenance employees of the Company at its South Beloit, Illinois, plant, including leadmen, set-up men, inspectors, and subforemen, but excluding office and plant clerical employees, technical employees in the main office, timekeepers,

⁵ So far as the record discloses, Spangler, Dietsch, and McMillan are the only employees of the Company whose job classification is listed for inclusion in the bargaining unit and whose authority with respect to the work status of their fellow employees require their exclusion in accordance with our usual practice.

⁶ *Matter of Howard Aircraft Corporation*, 51 N. L. R. B. 386; *Matter of Westinghouse Electric & Manufacturing Company*, 45 N. L. R. B. 826.

watchmen, militarized guards, plant superintendent, assistant superintendent, senior foremen, junior foremen, assistant foremen, supervisor of women, and all subforemen and 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 unit found appropriate in Section IV, above, 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 Warner Electric Brake Company, South Beloit, Illinois, 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 Thirteenth 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 United Steelworkers of America, C. I. O., for the purposes of collective bargaining.