

In the Matter of **ELLICOTT MACHINE CORPORATION and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA—CIO**

Case No. 5-R-1427.—Decided January 21, 1944

Mr. William D. MacMillan, of Baltimore, Md., for the Company.

Mr. Leon Deane, of Baltimore, Md., for the Union.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio & Machine Workers of America—CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ellicott Machine Corporation, Baltimore, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Baltimore, Maryland, on November 24 and 26, 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

The Company moved at the hearing to dismiss the Union's petition. Ruling on the motion was reserved for the Board. In view of the findings made in Sections III and IV, *infra*, the motion is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Ellicott Machine Corporation, a Maryland corporation, operates a plant in Baltimore, Maryland, where it is engaged in the manufacture

of heavy machinery. In its operations the Company uses raw materials consisting chiefly of iron and steel products. During the year 1943 the value of such raw materials purchased by the Company was approximately \$1,000,000, of which approximately 85 percent was shipped to the Company from points outside the State of Maryland. During the same period the value of the Company's finished products exceeded \$1,500,000, of which 98 percent was delivered to the United States Government. The Company admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers 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

The Union heretofore filed a petition and amended petitions in Case No. 5-R-1271, and participated in a consent election conducted among the Company's employees on June 24, 1943, which it lost. The parties have stipulated that subsequent to that election the Union has made no formal request of the Company for recognition as the collective bargaining representative of the Company's employees, but that, had such a request been made, the Company would have refused to extend recognition.

The Company now contends that the Union's petition in the instant case should be dismissed because (1) the prior consent election is a bar, (2) the prior consent election was arbitrarily and illegally set aside by the Regional Director, and (3) before the Board proceeds with the present representation proceeding, two complaint proceedings filed against the Company by the Union and subsequently withdrawn without prejudice, should be permanently disposed of.

That the prior consent election is not a bar to the present determination of any question concerning representation in the instant case, is a matter well-settled by previous Board decisions, which have held, in effect, that even though a petitioner has recently lost a consent election, nevertheless, where no representative was chosen and the petitioner makes a substantial showing of representation on the basis of current authorizations, the Board will entertain and proceed with a petition seeking a certification of representatives.¹ In the aforesaid

¹ See *Matter of Wagner Electric Co.*, 53 N. L. R. B. 543; *Matter of Automatic Products Company*, 40 N. L. R. B. 941, 943-4; *Matter of Detroit Nut Company*, 39 N. L. R. B. 739, 741; *Matter of Southport Petroleum Company of Delaware*, 39 N. L. R. B. 257, 259; *Matter of New York Central Iron Works, Hagerstown, Maryland*, 37 N. L. R. B. 894, 896; and *Matter of Chrysler Corporation*, 37 N. L. R. B. 877, 879.

consent election, no representative was chosen. A statement of a Field Examiner of the Board, introduced into evidence at the hearing, as supplemented by a statement of the Trial Examiner made at the hearing, indicates that the Union represents a very substantial number of employees in the unit which it contends to be appropriate.² If the consent election itself is not a bar to the present proceedings, the fact that it was set aside by the Regional Director, arbitrarily or otherwise, cannot make it a bar. Therefore, the charge that the Regional Director acted arbitrarily is not a relevant consideration in determining whether to proceed on the present petition, and we need not consider whether the charge is well founded.

With respect to the third ground upon which the Company seeks dismissal of the Union's petition, the Company concedes that it is well established Board practice to proceed with a representation case when charges of unfair labor practices filed against the employer by the petitioner are withdrawn without prejudice. The Company argues, however, that circumstances in the instant proceedings require an exception to this practice. Thus, it is pointed out that the Union on March 29, 1943, filed a charge in Case No. 5-C-1613, alleging two violations of Section 8 (3) of the Act; that the charge was withdrawn without prejudice on May 5, 1943; that on June 28, 1943, the Union filed a charge in Case No. 5-C-1655, alleging a third violation of Section 8 (3), and filed objections to the consent election held June 24, 1943, setting out as grounds for the objections, the three alleged 8 (3) violations, and interference with the election by anti-union speeches and publications; that on July 20 and 27, 1943, amended charges were filed in Case No. 5-C-1655, to include the additional allegation of interference with the election by speeches and publications; that on August 10, 1943, the Regional Director set aside the election solely on the basis of those objections which set forth the anti-union speeches and letters emanating from the Company; that on October 22, 1943, the charge in Case No. 5-C-1655 was withdrawn without prejudice;

² The Field Examiner stated that the Union had submitted to him 92 application cards, all bearing apparently genuine, original signatures; that 63 of the cards bore names of persons whose names appeared on the Company's October 24, 1943, pay roll, which listed 139 employees in the unit hereinafter found to be appropriate; and that 55 of the latter 63 cards were dated since the June 24, 1943, consent election.

The Trial Examiner stated that 11 cards were submitted to him, only 1 of which bore the name of an additional employee listed on the pay roll of October 24, 1943.

The Company objected at the hearing to the admission into evidence of the above statement of the Field Examiner, on the ground that the signatures appearing on the application cards were not checked for authenticity. The Trial Examiner overruled the Company's objection. Inasmuch as authorization cards are required simply to provide a reasonable safeguard against the indiscriminate institution of representation proceedings by labor organizations which might have little or no membership in the unit claimed to be appropriate, we have considered it unnecessary that a comparison be made of the signatures written on the cards with signatures of the employees. It suffices, for the purpose of a representation proceeding, in the absence of reasonable cause for doubt, that the signatures appear to be original and genuine.

and that on October 25, 1943, the petition in Case No. 5-R-1271 was withdrawn.

We find some merit in the Company's last contention, to the extent that we are of the opinion that a labor organization which has filed a petition seeking a certification of representatives and which has also filed charges of unfair labor practices against an employer, should not be permitted to proceed on the petition after withdrawing its charges without prejudice, and then, in the event it loses at a subsequent election, be permitted to use the subject matter of the charges as objections to the election. Accordingly, in the instant case and in future cases where charges are withdrawn without prejudice to facilitate the determination of a representation proceeding, we shall treat the withdrawal of the charges without prejudice as an automatic waiver by the petitioning union of the right to use the subject matter of those charges as a basis for objections to the election. To the extent that the contentions of the Company, which we have just considered, are directed to a dismissal of the Union's petition, we find that they have no merit.

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 requests a unit of all employees of the Company, excluding watchmen, guards, draftsmen, clerical and office employees, janitresses in office buildings, storekeeper, machinist working off company property, and supervisory employees. The Company objects to the proposed unit only to the extent that it excludes the storekeeper and the machinist working off company property.

Storekeeper: This employee has charge of small supplies, such as bolts, nails, and wire. His principal function is to issue this material upon receipt of requisition slips. Not more than 5 percent of his working time is devoted to keeping a record of the slips submitted to him. The storekeeper, like the production employees, is hourly paid and shares in the bonus plan, whereas clerks receive a salary and do not participate in the bonus plan. Likewise, he has the same general privileges as other workers. Working with him is a helper over whom he exercises no disciplinary power. We shall include the storekeeper in the unit.

Outside machinist: Under its sales contract the Company is required to furnish a skilled machinist to be present on the property of the vendee for the purpose of observing the assembly and installation of the engines which it delivers. At the time of the hearing, all of the engines produced by the Company were delivered to a single

shipbuilding concern. During the preceding year, one of the Company's machinists has reported directly to the shipyard instead of the plant to observe the installation of the engines. This machinist is otherwise employed under the same terms and conditions of employment as other machinists at the plant, including hourly pay and participation in the bonus plan. His duties do not include any supervisory functions. He is subject to return to work at the plant at any time, and other machinists are subject to perform duties similar to those he carries out. We find that the outside machinist has a common interest with the other production and maintenance employees in the selection of a collective bargaining representative, and we shall include him in the unit.

We find that all employees of the Company, including the storekeeper and the outside machinist, but excluding watchmen, guards, draftsmen, clerical and office employees, janitresses in office buildings, and 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 our Direction of Election herein, subject to the limitations and additions as set forth therein.³

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 Ellicott Machine Corporation, Baltimore, Maryland, 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 Fifth Region, acting in this matter

³ The Union requested that eligibility to vote be determined by the pay-roll period ending November 21, 1943, because of the turnover among the employees. We do not consider that the circumstances of the instant case require a departure from our customary practice in determining the eligibility date, as set forth in Section V.

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 reemployed prior to the date of the election, to determine whether or not they desire to be represented by the UE-CIO, for the purposes of collective bargaining.⁴

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

⁴ The Union expressed a preference at the hearing that its name appear on the ballot as set forth in the Direction of Election.