

In the Matter of FARREL BIRMINGHAM COMPANY, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT 76, LOCAL LODGE 1661

Case No. 3-R-704.—Decided January 27, 1944

Mr. Milton Addison Nixon, for the Board.

Mr. Edward D. Flaherty, of Buffalo, N. Y., for the Company.

Messrs. D. J. Omer and R. D. Newell, both of Buffalo, N. Y., for the Union.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists District 76, Local Lodge 1661, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Farrel Birmingham Company, Inc., Buffalo, 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 Buffalo, New York, on December 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 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

Farrel Birmingham Company, Inc., a Connecticut corporation, has an office and two plants at Buffalo, New York, where it is engaged in the manufacture of machinery and foundry implements of war. During the period from July 1, 1942, to July 1, 1943, the Company

used at its Buffalo plants, raw materials valued at approximately \$2,000,000, of which approximately 50 percent was obtained from points outside the State of New York. During the same period, the Company manufactured at its Buffalo plants, finished products of approximately \$4,000,000, in value, of which approximately 70 percent was shipped to points outside the State of New York. The Company admits that it is engaged in commerce with the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District 76, Local Lodge 1661, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about November 9, 1943, the Union, claiming majority representation, requested that the Company recognize it as the exclusive bargaining representative of the Company's plant-protection employees at its Buffalo plants. The Company declined to recognize the Union until certified by the Board.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the units hereinafter found appropriate.¹

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 Act.

IV. THE APPROPRIATE UNIT

The Union contends that all uniformed guards including sergeants and watchmen at the Company's Buffalo, New York, plants, but excluding the lieutenant and the chief of guards, constitute a unit appropriate for the purposes of collective bargaining. While the Company takes no position in regard to the proposed inclusion of watchmen within the appropriate unit, the Company contends that sergeants² should be excluded from such unit.

With respect to the status and responsibilities of sergeants, as contrasted with those of the ordinary guards comprising the greater

¹ The Field Examiner reported that the Union had submitted 18 designations dated in November 1943, all of which bore the apparently genuine, original signatures of persons whose names are on the Company's pay roll of November 6, 1943, containing 24 names within the claimed appropriate unit.

² The sergeants herein concerned are two in number.

part of the Company's plant-protection employees, it appears that while the sergeants are paid at nearly the same hourly rate and to some extent perform the same duties as the ordinary guards, the latter are under the general supervision of the sergeants to whom they are under the duty of making hourly reports, and from whom they receive instructions in the general performance of their duties. In addition thereto, the evidence discloses that sergeants not only may send home any guards who report for work in an unfit condition or are found to be derelict in the performance of their duties, but also may recommend other disciplinary action, which recommendations are generally followed by the chief of the guards who is in general charge of all plant-protection employees. Under these circumstances, we find that the sergeants in question have substantial supervisory duties. We shall, therefore, in accordance with our customary practice with respect to supervisory employees, exclude the sergeants from the guard unit hereinafter found appropriate.³

There remains for consideration the further request of the Union that watchmen⁴ be included within the appropriate unit. While this request is not opposed by the Company, a difficulty with respect thereto arises due to the fact that the guards in question are armed and militarized, whereas the watchmen are ordinary plant-protection employees with duties and responsibilities generally distinguishable from those of armed militarized guards.⁵ Therefore, in accordance with our policy of separating for purposes of collective bargaining militarized guards from non-militarized plant-protection employees,⁶ we shall not include the watchmen within the unit of militarized guards.

We find that all militarized guards of the Company at its Buffalo, New York, plants, excluding sergeants, lieutenants, the chief of guards, and all 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 appropriate unit who were employed during the pay-roll

³ See *Matter of Consolidated Steel Corporation*, 51 N. L. R. B. 333.

⁴ The watchmen herein concerned are four in number.

⁵ Although one watchman regularly substitutes for a guard during relief periods, he is nevertheless primarily a watchman with none of the distinguishing characteristics of a guard.

⁶ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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 Farrel Birmingham Company, Inc., Buffalo, 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 Regional 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 election, to determine whether or not they desire to be represented by International Association of Machinists, District 76, Local Lodge 1661, A. F. L., for the purposes of collective bargaining.