

In the Matter of TYLER FIXTURE CORPORATION and UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL #816 (AFL)

Case No. 7-R-1586.—Decided January 27, 1944

*Burns and Hadsell*, by *Mr. Philip A. Hadsell*, of Niles, Mich., for the Company.

*Mr. Claud Brice*, of Kalamazoo, Mich., for the Union.

*Mr. William Strong*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Union, United Automobile Workers of America, Local #816 (AFL), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Tyler Fixture Corporation, Niles, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harold A. Crane field, Trial Examiner. Said hearing was held at Niles, Michigan, on December 18, 1943. The Company and the Union appeared at and participated in the hearing. All parties 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

Tyler Fixture Corporation, a Michigan corporation, maintains its offices and three principal plants in Niles, Michigan, where it is engaged in the production of various items for use in the prosecution of the war. At the time of the hearing, of the raw materials utilized

by the Company in its production for a 6-month period, exceeding in value \$100,000, more than 80 percent was obtained from sources outside the State of Michigan. During the same period, substantially all of the Company's finished products, valued in excess of \$200,000, were shipped to consignees outside of the State of Michigan. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers of America, Local # 816, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

During September 1943 the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company declined to recognize the Union until it has been certified by the Board.

A statement of the Acting Regional Director for the Board, introduced into evidence, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</sup>

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 employees of the Company, except foremen, superintendents, and office employees constitute an appropriate unit. The Company objects to the inclusion in the unit of watchmen, interstate truck drivers, and the stockroom keeper. The Company, without objecting to their proposed inclusion by the Union, points to its maintenance employees as meriting particular consideration by the Board.

The maintenance employees perform the duties usually associated with that category of workers. The record discloses no reason for excluding them from the unit. The Union would include them; the Company assumes no position. We shall include the maintenance employees in the unit.

The Company employs two groups of truck drivers, one for local deliveries and the other for interstate deliveries. The interstate

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<sup>1</sup> The Acting Regional Director stated that the Union presented 83 authorization cards bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of October 31, 1943. On that date there were 165 employees in the proposed unit. Since then there has been some turnover in the Company's personnel.

drivers are paid on a monthly basis; the local drivers on an hourly basis. The interstate drivers spend longer periods of time away from the plant, are less subject to direct supervision than are the local drivers, and make collections in connection with C. O. D. deliveries. Both groups of drivers are clearly entitled to collective bargaining representation under the Act. No labor organization other than the Union seeks to represent them. We shall include all the drivers within the unit.

The Company employs one stockroom keeper, who is custodian for the Company of certain materials and tools, which he distributes upon requisitions signed by the foremen. At times he acts as a receiving clerk, and occasionally receives money on behalf of the Company. He is hourly paid. He is immediately and directly responsible to the superintendent of plant 1<sup>2</sup> and holds a position in the Company's organization which carries greater responsibility than that of most foremen. We shall exclude the stockroom keeper from the unit.<sup>3</sup>

The watchmen are armed. At the time of the hearing before the Trial Examiner, some of the guards were, and others shortly were to become auxiliaries of the military police. In accordance with our usual practice, we shall exclude these militarized watchmen from the production and maintenance unit.<sup>4</sup>

We find that all employees of the Company, excluding office employees, watchmen, the storeroom keeper, foremen and superintendents, and all other supervisory employees who have 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 means of 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

<sup>2</sup> The Company has three plants, all included in the unit sought by the petitioner.

<sup>3</sup> The parties stipulated that the exclusory category of "office employees" shall include a shipping and receiving clerk in plant 1, a timekeeper in each of the plants 1 and 2, and an office clerk in plant 2

<sup>4</sup> See *Matter of Dravo Corporation, etc.*, 52 N. L. R. B. 322.

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 Tyler Fixture Corporation, Niles, Michigan, 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 Seventh 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 any 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 Union, United Automobile Workers of America, Local #816 (AFL), for the purposes of collective bargaining.