

In the Matter of UNIVERSAL CAMERA CORPORATION and LOCAL UNION
No. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Case No. 2-R-1242.—Decided February 2, 1944

Kaye, Scholer, Fierman & Hays, by *Mr. Harold L. Fierman*, of New York City, for the Company.

Mr. Harold Stern, of New York City, for the I. B. E. W.

Boudin, Cohn & Glickstein, by *Mr. H. N. Glickstein*, of New York City, and *Protter Bagley*, by *Mr. Julius E. Bagley*, of New York City, for Local 208.

Mr. Charles W. Schneider, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local Union No. 3, International Brotherhood of Electrical Workers, herein called the I. B. E. W., alleging that a question affecting commerce had arisen concerning the representation of employees of Universal Camera Corporation, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Richard J. Hickey, Trial Examiner. Said hearing was held at New York City on November 26, 30, and December 1, 1943. The Company, the I. B. E. W., and United Optical Workers Union, Local Industrial Union No. 208 (C. I. O.), herein called Local 208, 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

Universal Camera Corporation is a Delaware corporation having its principal office and plant in New York City, where it is engaged

54 N. L. R. B., No. 153.

in the manufacture of optical lenses and binoculars for the United States Government.

During the period from November 1, 1942, to October 31, 1943, the Company purchased raw materials, consisting of glass and fabricated parts, valued in excess of \$1,000,000, of which approximately 50 percent was received from sources outside the State of New York. During the same period, the Company sold finished products, consisting of optical lenses and binoculars, valued in excess of \$3,000,000, all of which was delivered to the armed services of the United States.

The Company concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Local Union No. 3, International Brotherhood of Electrical Workers, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Optical Workers Union, Local Industrial Union No. 208, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 1, 1943, the I. B. E. W. notified the Company by letter that it represented a majority of the Company's maintenance employees and requested recognition. The Company did not reply.

On March 16, 1943, the Company entered into a written contract with Local 208, in which the latter was recognized as the exclusive bargaining representative of certain of the Company's employees. This contract has a termination date of March 15, 1944, and is automatically renewable unless notice of a desire to change the agreement is given by either party at least 30 days prior to the expiration date.

The Company and Local 208 contend that this contract covers the employees whom the I. B. E. W. seeks to represent. Since the agreement will shortly expire, and for other reasons apparent hereinafter, we find that the contract does not constitute a bar to a present determination of representatives.

A statement of the Regional Director introduced into evidence at the hearing, and a statement of the Trial Examiner, indicate that the I. B. E. W. represents a substantial number of employees in the alleged appropriate unit.¹

¹The I. B. E. W. submitted to the Regional Director and to the Trial Examiner authorization cards, 1 of which was undated, and the remainder dated in August 1943, apparently indicating that the I. B. E. W. has been designated as their bargaining agent by 33 out of 34 employees in the alleged appropriate unit. Local 208 submitted no evidence of representation, but relies upon its contract to establish its interest.

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 DETERMINATION OF REPRESENTATIVES

The I. B. E. W. contends that all maintenance mechanics, maintenance mechanics' helpers, and carpenters, constitute an appropriate unit. The Company and Local 208 contend (1) that the employees in the I. B. E. W. unit are covered by the existing contract; and (2) that such employees do not constitute an appropriate unit because (a) they properly belong in an industrial unit, and (b) the I. B. E. W. unit encompasses two groups of maintenance employees, "optical" and "building," having nothing in common with each other.

The evidence discloses that the maintenance employees in the Company's plant are divided into two groups: optical and building. The two groups have separate offices and different supervisors. Both are independent of the production departments. Generally the optical maintenance men are engaged in the maintenance of machines in the optical department (that department of the plant which manufactures lenses and prisms for binoculars), while the building maintenance men are engaged in structural repairs and maintenance of the premises. The optical maintenance work consists of millwrighting, plumbing, carpentry, and electrical work; building maintenance mainly of carpentry and painting. However, despite the general distinction between the two groups, and although the Company and Local 208 contend to the contrary, the record discloses that the optical maintenance men work all over the plant and do building maintenance work, and that the building maintenance group on occasion will assist in optical maintenance work.

On December 15, 1941, and January 29, 1942, consent elections were held among the Company's employees. Both elections were won by Local 208. Although neither consent election agreement definitely described the unit upon which the election was based, it seems clear from the record that eligibility to vote was confined to production employees, and that no member of either maintenance group voted in either election, despite the fact that both groups were in existence at that time.

On March 16, 1942, the Company executed a contract with Local 208 recognizing the latter as the exclusive bargaining representative for "factory employees who are now employed in the binocular department, optical department and the fabrication units," excluding supervisory employees.

In December 1942, the maintenance employees applied for membership in Local 208. By formal vote at a regular meeting the members

of Local 208 refused to accept their applications and declined to admit them. In March 1943, the present contract was signed between the Company and Local 208. Thereafter the maintenance employees signed application cards for the I. B. E. W.

It is apparent from the record, and we find, after full consideration of all the facts, that the maintenance employees were not eligible to vote in the 1941 and 1942 elections, and were not intended to be covered by either the 1942 or the 1943 contract.

Under the circumstances presented, the maintenance employees could function either as a separate bargaining unit, or as part of a plant-wide unit. We shall therefore make no final determination at this time as to the appropriate unit, but shall direct an election among the employees in the voting group set forth below, subject to the limitations and additions hereinafter noted. We interpret Local 208's contentions at the hearing as an affirmation that Local 208 will now accept the maintenance employees as members and accord them all the privileges normally attaching to that status. Upon the basis of that assumption,² and in view of the contractual relationship between Local 208 and the Company, we shall accord Local 208 a place on the ballot, despite the fact that it submitted no evidence of present representation among the maintenance employees.

If a majority of the employees voting in the election choose the I. B. E. W., they will constitute a separate unit for bargaining purposes; if they choose Local 208 they will thereby have indicated their desire to become part of the unit of factory employees now represented by Local 208.³

There remains for consideration several groups of employees, as to whom the parties are in apparent dispute.

Machinists: The Company employs some seven or eight machinists who make jigs, tools, and fixtures for production work. It is not clear from the record to which department they are attached. The I. B. E. W. wishes to exclude the machinists; the Company and Local 208 would include them in the industrial unit. The nature of the machinists' work allies them more closely with the production than with the maintenance group. They will therefore be excluded.

Porters: There are some nine male and female porters under the jurisdiction of the optical maintenance department, whom the I. B. E. W. would exclude. They are apparently messengers. Local 208 stated, with reference to the porters, that it was "standing on its contract." The Company indicated no position. We shall exclude the porters.

Supervisors: All parties agreed that supervisory employees with authority to effect changes in the status of employees or effectively

² Cf. *Matter of Bethlehem-Alameda Shipyard, Inc.*, 53 N. L. R. B. 999.

³ *Matter of Wilson Packing Company*, 40 N. L. R. B. 916; 41 N. L. R. B. 905.

recommend such action should be excluded from any appropriate unit. They did not, however, indicate their position with respect to specific employees. In the optical maintenance group the supervisors falling within the above definition are the plant engineer, three assistant engineers, and Barkins. Barkins is in charge of maintenance procurement, acts as an assistant engineer, and exercises the same authority. All will be excluded, as supervisory employees.

At the time of the hearing, Frank Caviola was temporarily acting as an assistant engineer. Normally, he is an ordinary maintenance mechanic. Caviola's right to vote in the election will depend upon whether he is still occupying a supervisory position on the eligibility date hereinafter designated.

Albert Antonacchi is the chief supervisor of the building maintenance men. He will be excluded. There is some suggestion that Louis Kaplan and Eugene Schwartz, building maintenance employees, may be supervisors. However, the record does not afford an adequate basis for determining their precise status. Their eligibility to vote in the election is therefore made dependent upon whether they fall within the category of supervisory employees as defined hereinafter.

In accordance with the foregoing, we shall direct that the employees eligible to vote in the election to be conducted shall be all maintenance mechanics, maintenance mechanics' helpers, and carpenters, 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, and excluding machinists, porters, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

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 Universal Camera Corporation, 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 employees of the Company in the voting group designated 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 who have not been rehired or reinstated prior to the election, to determine whether they desire to be represented by Local Union No. 3, International Brotherhood of Electrical Workers, or by United Optical Workers Union, Local Industrial Union No. 208, for the purposes of collective bargaining, or by neither.