

In the Matter of C. H. WHEELER MANUFACTURING Co. and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

Case No. 4-R-1301.—Decided February 11, 1944

Mr. Randolph W. Childs, of Philadelphia, Pa., for the Company.

Mr. William Dameron, Mr. Joseph Greenwood, Mr. Adam Yokel, of Philadelphia, Pa., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of C. H. Wheeler Manufacturing Company, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on January 7, 1944. The Company and the Union appeared and participated. 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. The Company moved at the hearing for a dismissal of the petition. The Trial Examiner reserved ruling on the motion. For reasons more fully set forth in Section III, *infra*, the motion is hereby denied. All parties were afforded an 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

C. H. Wheeler Manufacturing Company, a Pennsylvania corporation, is engaged at Philadelphia, Pennsylvania, in the manufacture,

sale, and distribution of condenser equipment and deck machinery. During 1943, more than 50 percent of the raw materials used by the Company, totally valued at more than \$3,500,000, was brought into its plant from sources outside the State of Pennsylvania. During the same period more than 50 percent of the Company's products, totally valued at about \$6,730,000, was transported to and through States other than Pennsylvania.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On August 27, 1943, the Union wrote to the Company stating that it was the collective bargaining representative of a substantial number of employees of the Company and requesting a collective bargaining conference. The Union also filed a petition under Section 9 of the Act in the Board's Regional Office in Philadelphia. On September 8, the Company replied to the Union's letter of August 27, stating that in view of the Union's filing of the petition, the Company did not "deem it necessary to reply" to the Union's letter. On October 4, the Union withdrew its petition because it was unable to show representation of a substantial number of employees in the unit which it claimed to be appropriate. The Regional Director advised the Company of the withdrawal of the petition. The Union filed its petition in the instant case on November 18, 1943, without making any further demands upon the Company.

At the hearing the Company moved for dismissal of the petition on the ground that there is no question concerning representation. We disagree. The position of the Company, as reflected by its letter of September 8, was in effect that it would leave to, and await determination by the Board of the Union's representation status prior to taking any further action upon the Union's collective bargaining demand. At no time thereafter did the Company indicate any change in its attitude and the Union was entitled to conclude, as it apparently did, that the Company's attitude remained unchanged. Subsequent to the filing of the instant petition, the Company at no time offered to bargain with the Union prior to its certification by the Board. Moreover, at the hearing the Company stipulated as to its business and the unit, and generally participated in a manner indicating that the Union's status would have to be ascertained and certified by the

Board prior to recognition of the Union by the Company. It is clear from the totality of the Company's actions that had it been asked at any time whether it would recognize the Union as the exclusive bargaining representative without prior certification by the Board the answer would have been in the negative.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit 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 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all hourly paid production and maintenance employees of the Company, including the storekeeper and expeditors,² but excluding administrative, office and clerical employees, truck drivers, guards, executives, foremen, foremen in the engine room, the engineer in charge of tests, the head of the shipping department, and any 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 payroll 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

¹The Regional Director reported that the Union submitted 130 authorization cards, 110 of which bore apparently genuine original signatures; that the names of all 110 persons appearing on the cards were listed on the Company's pay roll of November 17, 1943, which contained the names of 312 employees in the appropriate unit. At the hearing it was shown that the appropriate unit contained approximately 320 employees on that date.

²The parties stipulated to include in the unit the receiving department leadman. The record does not show his duties. Leadmen often possess authority and power which make them ineligible for inclusion in units. We shall include or exclude the leadman depending upon whether he falls within our customary definition of a supervisory employee.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with C. H. Wheeler Manufacturing Co., Philadelphia, Pennsylvania, 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 Fourth 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 Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining.