

In the Matter of SPRAGUE SPECIALTIES COMPANY and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (CIO)

*Case No. 1-R-1694.—Decided February 24, 1944*

*Mr. William J. Nolan*, of Boston, Mass., and *Mr. Ralph A. Lind*, of New York City, for the Company.

*Messrs. Hugh Harley* and *Gerard Steinberg*, of Pittsfield, Mass., for the U. E.

*Mr. John N. Alberti*, of North Adams, Mass., for the Independent.

*Mr. Leon Novak*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America (CIO), herein called the U. E., alleging that a question affecting commerce had arisen concerning the representation of employees of Sprague Specialties Company, North Adams, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas H. Ramsey, Trial Examiner. Said hearing was held at North Adams, Massachusetts, on January 20, 1944. The Company, the U. E., and Independent Condenser Workers Local No. 2, herein called the Independent, 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. Subsequent to the hearing, the Company moved to reopen the record in order to adduce further evidence with relation to the wages paid by it to one of its employees. Inasmuch as the Company was afforded ample opportunity, at the hearing, to present such testimony, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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

Sprague Specialties Company is a Massachusetts corporation with its principal office and place of business in North Adams, Massachusetts, where it operates 3 plants and where it is engaged in the manufacture of electronic parts for chemical warfare service. During the year 1943, the Company purchased raw materials consisting chiefly of steel, wire, tin, copper, brass, and bronze, valued at approximately \$2,000,000 of which 90-percent was shipped to the Company's plants from points outside the Commonwealth of Massachusetts. During the same period the Company sold finished products valued at approximately \$8,000,000, of which approximately 90 percent was shipped by it to points outside the Commonwealth of Massachusetts.

The Company admits, for the purpose of this hearing, that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Independent Condenser Workers Local No. 2, is an unaffiliated labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On March 25, 1942, the Company and the Independent entered into a bargaining agreement covering all hourly paid employees of the Company. The term of the contract was for a period of 1 year, renewable from year to year thereafter, unless written notice of an intention to terminate the contract was given by either party on or before March 1 of any year.

On November 1, 1943, the U. E. requested recognition by the Company as the exclusive bargaining representative of the militarized guards. The Company refused this request, stating that it had recognized the Independent as the bargaining representative of certain of its employees, including the militarized guards.<sup>1</sup>

<sup>1</sup> The claim was not made by any of the parties at the hearing, that the Company's contract with the Independent, constitutes a bar to this proceeding. Following the hearing, however, the Company, in its brief, contended that a limitation upon the expenditure of Board funds contained in the *Labor-Federal Security Appropriations Act* (Act of July 12, 1943, 78th Cong.; C 221, P. No 135, Title IV), precludes the Board from proceeding herein. For reasons stated in *California Door Company*, 52 N. L. R. B. 68, we find no merit in this contention.

A statement of the Board agent, introduced into evidence at the hearing, indicates that the U. E. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</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 U. E. contends that all of the Company's militarized guards, including the captain of guards, but excluding the chief of guards, constitute an appropriate unit. The Company and the Independent argue that only an industrial unit in which the militarized guards are included is appropriate. In support of this argument, they point to the history of collective bargaining on an industrial basis, whereby the guards, since 1937, have been represented by the Independent in a unit of production employees. In addition, the Company and the Independent assert that the militarized guards have an interest in the production and maintenance unit by virtue of the fact that they devote part of their working time to work in production. The militarized guards are plant-protection employees employed as such on a full-time basis. Although the Company affords them an opportunity to augment their income by additional work in production, the majority of the militarized guards do not avail themselves of this privilege; the remainder do so without regularity and for a varying number of hours each week. While a prior history of collective bargaining is a factor to be considered in determining whether or not a unit is appropriate, it is not, in our opinion, necessarily controlling. Moreover, in 1937, and for several years thereafter, when the Company's guards were included in an industrial unit, they had not, as yet, been militarized. Although we have included ordinary watchmen and guards in a single industrial unit with production and maintenance workers, we have not done so with respect to militarized guards, whose interests and duties, because of their militarized status, differ materially from those of production employees. We find, in accordance with our usual practice, that they properly constitute a separate unit.<sup>3</sup>

<sup>2</sup> The Regional Director reported that the U. E. submitted 22 cards all of which bore apparently genuine, original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll of November 4, 1943, which contained the names of 36 persons in the appropriate unit. The Independent made no showing of membership, relying on its contention that it represented these employees by virtue of its contract with the Company.

<sup>3</sup> *Matter of Diavo Corporation*, 52 N. L. R. B. 322.

There is controversy over the inclusion in or exclusion from the appropriate unit, of the captain of the guards; the U. E. would include the captain, whereas the Company and the Independent would exclude him. The captain is an officer immediately subordinate to the chief of guards, concerning whose supervisory status there is no dispute. In the absence of the chief, the captain is charged with all of the supervisory duties ordinarily possessed by him. Although the captain is chiefly engaged in functions similar to those of the other guards, when the chief is on duty, he nevertheless has the authority to discipline such guards when necessary. We shall exclude the captain of guards from the appropriate unit.

We find that all militarized guards of the Company, excluding the captain and 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 period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction. The U. E. contends that approximately four guards who are employed on an irregular, part-time basis, should not be eligible to vote in the election. These employees are not on the Company's pay roll. In an emergency, and at sporadic intervals, they are requested to report for duty, but it appears that discretion is left with them as to whether or not they report for work. When employed they do not wear uniforms and not all of them are militarized. We are of the opinion, and find, that these employees do not have sufficient interest in the designation of a bargaining representative, and are, therefore, not eligible to vote in the election provided for herein.

#### 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 Sprague Specialties Company, North Adams, Massachusetts, an election by secret bal-

lot 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 First 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 date of the election, to determine whether they desire to be represented by United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or by Independent Condenser Workers Local No. 2, for the purposes of collective bargaining, or by neither.