

In the Matter of THE OLIVER FARM EQUIPMENT COMPANY and AMERICAN FEDERATION OF LABOR

*Case No. 14-R-847.—Decided February 28, 1944*

*Mr. E. J. Moyer*, of Shelbyville, Ill., and *Mr. J. C. Wittner*, of Chicago, Ill., for the Company.

*Mr. Fred Olds*, of East St. Louis, Ill., for the Union.

*Mr. David V. Easton*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Federation of Labor, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Oliver Farm Equipment Company, Shelbyville, Illinois, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles E. Persons, Trial Examiner. Said hearing was held at Shelbyville, Illinois, on January 27, 1944. 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

The Oliver Farm Equipment Company, a Delaware corporation with its principal office located in Chicago, Illinois, operates plants in the States of Iowa, Indiana, Michigan, Ohio, and Illinois. We are concerned herein with the operation of the Company's plant located at Shelbyville, Illinois, where the Company is engaged in the manufacture of hay balers and some railroad track for railroads

and mines. During the Company's fiscal year between November 1, 1942, and November 1, 1943, it purchased raw materials valued at approximately \$600,000, of which about 50 percent was shipped to its Shelbyville plant from points outside the State of Illinois. During the same period, said plant produced finished products valued at approximately \$1,000,000, of which about 90 percent was sold to buyers located at points outside the State of Illinois.

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

## II. THE ORGANIZATION INVOLVED

Federal Labor Union No. 23575 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.<sup>1</sup>

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union 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 Union seeks to represent a unit composed of all hourly paid production and maintenance employees in the Company's production plant, foundry, and wood shop, including boilerhouse employees, janitors, servicemen, foundry employees, shipping clerks, and working foremen, but excluding superintendents, general foremen, office workers, timekeepers, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The Company, although agreeing generally with the proposed unit, contends that its maintenance men, watchmen, shipping clerks, field servicemen,<sup>3</sup> and working foremen should be excluded therefrom.

<sup>1</sup> The record shows that although the petition was filed by the "American Federation of Labor" all parties agreed that the subsidiary local organization more directly involved herein is Federal Labor Union No. 23575.

<sup>2</sup> The Regional Director reported that the Union submitted 113 designations and that there are approximately 140 employees in the proposed unit.

<sup>3</sup> These employees are designated by the Union as "servicemen."

The record shows that the maintenance man has general responsibility for the installation and maintenance of machinery in the plant and for its electrical wiring and equipment. He has assigned to him one permanent assistant, and is permitted such further help as the performance of his duties requires. Thus, under certain circumstances, he may have as many as 12 employees working under his direction. Although he does not hire or discharge employees, he may request that certain persons assigned to him be replaced because of inefficiency or other reasons, and is able to make recommendations respecting the status of these employees. Under these circumstances, we are of the opinion that he falls within our customary supervisory definition, and we shall therefore exclude him from the unit.

The Company employs four watchmen who are primarily concerned with the prevention of fire and theft, and have no duties pertaining to the discipline of employees. They are neither uniformed nor militarized. Under these circumstances, we shall include them within the unit.

The Company employs three shipping clerks who are occupied exclusively with the writing of bills and the recording of shipments. They handle no freight, and perform purely clerical duties under the direct and sole supervision of the office manager. We are of the opinion, therefore, that they would be more properly included within a unit of office clerical employees, and, accordingly, we shall exclude them from the present unit.

The Union desires the inclusion of two field servicemen employed by the Company. These employees are sent by the Company to the field in order to make adjustments and minor repairs on its products. When not so occupied, they perform production work in the plant. For this reason, the Union desires their inclusion within the unit, whereas the Company contends that their inclusion or exclusion should be dependent upon the amount of production work performed by them. In view of the fact that these employees act, in some respects, as representatives of the Company, we shall permit their inclusion or exclusion to be determined in accordance with the Company's contention, and shall exclude those field servicemen who spend the major portion of their time in other than production work.

The Company employs several working foremen who have charge of groups averaging approximately 15 employees. Although they do not hire, discharge, promote, or transfer any of these employees, they are consulted with respect to promotions and wage increases affecting them. They attend foremen's meetings, and, in addition, receive higher wages than the employees under their supervision. We are of the opinion that these employees are supervisory, and we shall therefore exclude them from the unit.

We find that all hourly paid production and maintenance employees of the Company at its Shelbyville, Illinois, plant, including boiler-house employees, janitors, foundry employees, watchmen, and servicemen who spend more than half their time in the performance of production work, but excluding the maintenance man, timekeepers, shipping clerks, working foremen, servicemen spending a major portion of their time in other than production work, as well as all 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. In December 1943, the assembly plant was completely destroyed by fire, with the result that the Company was required to lay off a number of employees. Many of these employees were given outright releases and are considered by the Company as permanently severed from the pay roll; others were given conditional releases, the Company expecting to recall such employees when it again resumes assembly work. The Union contends that both groups of employees should be eligible to vote, and for this reason, urges that the pay roll of December 21, 1943, be used to determine eligibility. The Company, while it agrees that those employees who have been granted conditional releases and over whom it still exercises certain rights with respect to reemployment, should be eligible to vote, opposes the inclusion within the voting group of those employees who were given outright releases and who are considered by it as permanently severed from its pay roll. We agree with the contention of the Company, and accordingly shall adhere to our customary practice of permitting temporarily laid-off employees<sup>4</sup> to participate in the election, and of denying participation to those whose lay-off is considered permanent. We shall direct that the employees of the Company eligible to vote in the election shall be those 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.<sup>5</sup>

<sup>4</sup> Employees granted conditional releases, and over whom the Company still exercises reemployment rights are hereby considered as coming within the category of temporarily laid off employees

<sup>5</sup> The Union requests that it be designated upon the ballot as "American Federation of Labor, Federal Labor Union No. 23575." This request is hereby granted.

## 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 The Oliver Farm Equipment Company, Shelbyville, Illinois, 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 Fourteenth 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 American Federation of Labor, Federal Labor Union No. 23575, for the purposes of collective bargaining.

**MR. JOHN M. HOUSTON** took no part in the consideration of the above Decision and Direction of Election.