

In the Matter of CLEVELAND PNEUMATIC TOOL COMPANY *and* METAL POLISHERS INTERNATIONAL UNION

In the Matter of CLEVELAND PNEUMATIC TOOL COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 54

In the Matter of THE CLEVELAND PNEUMATIC TOOL COMPANY *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (CIO)

Cases Nos. 8-R-1330, 8-R-1375 and 8-R-1377 respectively.—Decided March 24, 1944

Messrs. Fred J. Perkins, John E. Renfer, and Paul Black, all of Cleveland, Ohio, for the Company.

Mr. Ray Kelsay, of Cincinnati, Ohio, and Mr. Ray Muehlhoffer, of Cleveland, Ohio, for the Metal Polishers.

Messrs. John J. Murphy and Nick Charo, both of Cleveland, Ohio, for the I. A. M.

Mr. David Scribner, of New York City, and Messrs. Fred Haug and Fred Keller, both of Cleveland, Ohio, for the U. E.

Horan & Bell, by Mr. R. S. Horan, of Cleveland, Ohio, and Mr. George H. Sherman, of Cleveland, Ohio, for the Social Club.

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

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Metal Polishers International Union, herein called the Metal Polishers, International Association of Machinists, District 54, herein called the I. A. M., and United Electrical, Radio & Machine Workers of America (CIO), herein called the U. E., alleging that questions affecting commerce had arisen concerning the representation of employees of Cleveland Pneumatic Tool Company, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Louis Plost, Trial Examiner. Said hearing was held at Cleveland, Ohio, on January 31, 1944. The

Company, the Metal Polishers, the I. A. M., the U. E., and the United Social Club and Employees Association, herein called the Social Club, 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 I. A. M. made a motion at the hearing to withdraw a waiver which it filed in this proceeding with respect to Case No. 8-C-1391; the Trial Examiner referred this motion to the Board. However, subsequent to the hearing, the I. A. M. withdrew its motion by letter dated March 3, 1944. Accordingly, no ruling upon the motion is required. 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

Cleveland Pneumatic Tool Company, an Ohio corporation, maintains and operates a plant at Cleveland, Ohio, which is presently engaged in the manufacture of aircraft parts and pneumatic appliances. During the year 1942 the Company used raw materials at the Cleveland plant valued at approximately \$4,000,000, of which about 10 percent was shipped to said plant from points outside the State of Ohio. During the same period the Company manufactured finished products at the Cleveland plant having an approximate value of \$27,000,000, of which about 95 percent was shipped to points outside the State of Ohio. The Company is presently engaged in the manufacture of products for the national war effort and admits 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 is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Association of Machinists, District 54, and Metal Polishers International Union are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Social Club and Employees Association is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letters dated April 28, May 13, and July 28, 1943, respectively, the U. E., the I. A. M., and the Metal Polishers each requested recognition from the Company as the bargaining representative of certain of its employees. The Company made no reply to these letters.

A statement of the Board's Field Examiner, introduced into evidence at the hearing, indicates that the U. E., and the Metal Polishers each represents a substantial number of employees in the units each proposes.¹

We find that questions affecting commerce have arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Sections 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Metal Polishers seeks a unit composed of all employees of the Company engaged as metal polishers, buffers, platers, and helpers, excluding supervisory employees and all other employees. The I. A. M., the U. E., the Social Club, and the Company agree upon the propriety of an industrial unit composed of all production and maintenance employees, including timekeepers, but excluding all other clerical employees, militarized plant-protection employees, and supervisory employees, with the exception that the I. A. M. would exclude from its proposed unit, in addition to the foregoing exclusions, those employees in the unit sought by the Metal Polishers.

On April 4, 1939, an agent of the Board conducted an election among all production and maintenance employees of the Company including employees sought herein by the Metal Polishers. As a result of this election, the Company recognized the Social Club as the bargaining representative of this group, entering into contractual relations with

¹ The statement of the Field Examiner with respect to the designations submitted by the U. E., the I. A. M., and the Metal Polishers bearing apparently genuine original signatures of persons whose names appear upon the Company's pay roll dated December 31, 1943, may be summarized by the following chart

Name of organization	Number in unit proposed by organization	Number of designations submitted
U. E.	2,852	961
Metal Polishers	42	26
I. A. M.	*2,810	341

*The Field Examiner actually reported that there were 2,852 employees in this unit, since at the time he conducted his investigation, the I. A. M. was seeking a unit identical with that sought by the U. E. However, the I. A. M. amended its proposed unit at the hearing by excluding therefrom employees in the unit sought by the Metal Polishers.

The Social Club submitted no showing of authorizations in support of its motion to intervene. The record discloses, however, that in 1939 it won a consent election conducted by an agent of the Board (Case No 8-R-180) and that it has continued to represent employees of the Company.

it which continued until December 21, 1943. On that date, however, pursuant to unfair labor practice charges filed by the I. A. M., the Board issued an order directing, *inter alia*, that the Company cease recognizing the Social Club as the bargaining agent of its employees until the Social Club has been certified as such by the Board, and, in addition, cease giving effect to its current contract with that organization.² Under these circumstances, we find that the prior history of collective bargaining with the Company is in no wise controlling upon the unit issue in the instant proceeding.

The Board's order in the unfair labor practice proceeding rested in part upon a finding that set-up or AA men were supervisory employees. The record in the present proceeding indicates that no substantial change in the functions and duties of these employees has taken place since the issuance of the Board's order. Accordingly, we shall exclude set-up or AA men from the voting groups hereinafter designated.

The Metal Polishers seeks a unit coterminous with its craft jurisdiction. We have frequently found that employees engaged in classifications identical with those sought by the Metal Polishers constitute a functionally skilled and identifiable craft, traditionally represented as such for the purposes of collective bargaining.³ On the other hand, the duties and interests of these employees indicate that they may properly be included within a broader industrial unit for collective bargaining purposes. In the instant proceeding, two labor organizations seek to represent them as part of an industrial unit. Under similar circumstances, we have customarily permitted these employees to express a preference with respect to their collective bargaining agent,⁴ and no sufficient reason appears in the present case why an opportunity to express this preference should not be afforded. Accordingly, we shall make no final determination with respect to the appropriate unit or units at this time, but shall permit such determination to depend, in part, upon the outcome of the elections hereinafter directed.

We shall direct that separate elections by secret ballot be held among the employees in each of the voting groups set forth below, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.⁵ There shall be excluded from each of such voting groups, in addition to others specifically mentioned therein, all clerical employees other than timekeepers, militarized plant-pro-

² *Matter of The Cleveland Pneumatic Tool Company*, 53 N. L. R. B. 1437. The Company subsequently filed a petition currently pending in the Circuit Court for review of this order.

³ *Matter of The Yale & Towne Manufacturing Company*, 47 N. L. R. B. 1044.

⁴ *Matter of Toledo Scale Company*, 45 N. L. R. B. 472.

⁵ Since we are directing elections, we shall place the Social Club upon the ballots in both voting groups, and the I. A. M. upon the ballot in the residual voting group. The U. E. requested that it appear upon the ballot as "United Electrical, Radio & Machine Workers of America (UE-CIO)," and the I. A. M. requested that it appear thereon as "International Association of Machinists, District 54 (AFL)." Both requests are hereby granted.

tection employees, set-up or AA men, 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. The respective voting groups shall be as follows:

1. All metal polishers, buffers, platers, and helpers, excluding all other employees of the Company, to determine whether they desire to be represented by the Metal Polishers, the U. E., or the Social Club, for the purposes of collective bargaining, or by none of said organizations;

2. All remaining production and maintenance employees of the Company including timekeepers to determine whether they desire to be represented by the I. A. M., the U. E., or the Social Club, for the purposes of collective bargaining, or by none of said organizations.

DIRECTION OF ELECTIONS

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 Cleveland Pneumatic Tool Company, Cleveland, Ohio, separate elections 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 Eighth 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 groups of employees of the Company set forth below, who were employed during the pay-roll period immediately preceding the date of this election, 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, as well as all clerical employees other than timekeepers, militarized plant-protection employees, set-up or AA men, 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:

1. All metal polishers, buffers, platers, and helpers, excluding all other employees, to determine whether they desire to be represented by Metal Polishers International Union, affiliated with the American

Federation of Labor, by United Electrical, Radio & Machine Workers of America (UE-CIO), or by United Social Club and Employees Association, for the purposes of collective bargaining, or by none of said organizations;

2. All remaining production and maintenance employees including timekeepers to determine whether they desire to be represented by International Association of Machinists, District 54 (AFL), by United Electrical, Radio & Machine Workers of America (UE-CIO), or by United Social Club and Employees Association, for the purposes of collective bargaining, or by none of said organizations.