

IN the Matter of MINE SAFETY APPLIANCES CO., CALLERY PLANT,
CALLERY, PA. and UNITED ELECTRICAL, RADIO & MACHINE WORKERS
OF AMERICA (C. I. O.)

Case No. 6-R-859.—Decided April 11, 1944

Reed, Smith, Shaw & McClay, by Messrs. Nicholas Unkovic and Paul Heenan, and Mr. Howard Zacharias, of Pittsburgh, Pa., for the Company.

Messrs. Frederick R. Livingston and David Scribner, of New York City, and Mr. Leo Turner, of Pittsburgh, Pa., for the Union.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio & Machine Workers of America (C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Mine Safety Appliances Co., Callery, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on January 25, 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. On February 29, 1944, pursuant to notice served upon all the parties, a hearing for the purpose of oral argument was held before the Board at Washington, D. C. Both the Company and the Union appeared and participated.

55 N. L. R. B., No. 215.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Mine Safety Appliances Co., a Pennsylvania corporation, has its offices and principal place of business in Pittsburgh, Pennsylvania. The Company operates 14 plants in or about Pittsburgh in which it is engaged in the manufacture, sale, distribution, and installation of safety appliances for the mining and other industries. During the year 1943 the value of raw materials used by the Company at all its plants was in excess of \$15,000,000, of which approximately 80 percent was shipped to the several plants from points outside the Commonwealth of Pennsylvania. During the same period, the value of finished products sold by the Company was in excess of \$36,000,000, of which approximately 80 percent was shipped from the plants to buyers located outside the Commonwealth of Pennsylvania.

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

II. THE ORGANIZATION 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.

III. THE QUESTION CONCERNING REPRESENTATION

On November 2, 1943, a field organizer of the Union telephoned an official of the Company and requested a meeting to discuss working conditions. He was subsequently advised by an attorney of the Company to follow the Union's usual practice of filing a petition with the Board.

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 claimed to be 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

The principal unit issue presented herein is whether the employees of the Company's Callery plant may constitute a separate bargaining

¹ The Regional Director stated that the Union submitted to him 115 membership cards, all bearing apparently genuine original signatures, and that 110 of the cards bore names of persons whose names appeared on the Company's December 7, 1943, pay roll, which listed approximately 210 employees in the unit alleged to be appropriate

unit or should be considered as part of a single multiple-plant unit comprising employees of all 14 of the Company's plants. The Union petitions for a unit of employees of the Callery plant. The Company objects to any separation of its Callery employees from its other employees for purposes of collective bargaining.

The parties stipulated that if the foregoing issue is resolved by the Board in favor of the Union's position, then an appropriate unit at the Callery plant would comprise all production and maintenance employees, including more particularly solderers, the chemical workers, inspectors, assemblers, maintenance employees, storekeepers, and laboratory assistants, but excluding executives, the technical employees, chemists, office clerical employees, department clerks, plant-protection guards, a nurse, foremen, assistant foremen, and other supervisory employees with the authority to hire, discharge, promote, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

As indicated in Section I, *supra*, the Company operates 14 plants in the Commonwealth of Pennsylvania. Ten are located in Pittsburgh, 2 in Wilkesburg, 1 in Edgewood, and 1 in Callery. The 10 plants in Pittsburgh are not widely separated. Those at Wilkesburg are approximately three-fourths of a mile from the main plant in Pittsburgh; the Edgewood plant is $1\frac{1}{4}$ miles from the main plant; and the Callery plant is about 30 miles distant from the main plant. At its 14 plants the Company has approximately 2,700 employees, of whom some 275 are employed at Callery.

There is support in the record for the Company's position that a multiple-plant unit is appropriate. Thus, the manufacturer's processes of the several plants are highly integrated. Managerial control and laboratory control over all the plants is centralized in Pittsburgh. Substantially all records are maintained in, and virtually all purchasing and hiring is handled through the Pittsburgh general offices. The Callery plant is dependent upon one plant for carpentry work and relies on still another for toolmakers. Likewise, professional engineers and chemists are supplied to the Callery plant from the Pittsburgh area, when needed. Finally hours, base pay, and working conditions are substantially the same throughout all the plants.

On the other hand, there are many factors in the record which support the Union's present petition for a separate unit of Callery employees. Thus, the Company has had no history of collective bargaining on a multiple-plant basis. The distance of 30 miles separating the Callery plant from the other plants of the Company constitutes a substantial barrier to general contact between the bulk of Callery workers and the employees of other plants as respects union activities. Nor can such contact be maintained through a constant interchange of employees, for the record indicates that no production and main-

tenance employees have been transferred from the Pittsburgh area to Callery, and only three have been transferred from Callery to the Pittsburgh area. Despite the Company's centralized management and control, from an administrative and operational standpoint the Callery plant is separable from the other plants so that collective bargaining confined to it would appear to be feasible. Moreover, while the Union has attempted to organize other plants of the Company since 1940, it has not achieved a majority status on a system-wide basis. From the foregoing facts, we are of the opinion that the employees of the Callery plant should not be deprived at this time of their rights to bargain collectively under the Act, and we find, therefore, that they may comprise a unit appropriate for the purposes of collective bargaining. Our present determination does not preclude a later finding that a system-wide unit is appropriate when organization has extended more fully to other employees of the Company.

We find that all production and maintenance employees of the Company's Callery plant, including solderers, chemical workers, inspectors, assemblers, maintenance employees, storekeepers, and laboratory assistants, but excluding executives, technical employees, chemists, office clerical employees, department clerks, plant-protection employees, nurses, foremen, assistant foremen, 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 purpose 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 our Direction of Election herein, subject to the limitations and additions set forth therein.

It is requested by the Company that the Board permit voting by all employees serving in the armed forces of the United States. The Union also takes the position that such employees are entitled to express their choice of a bargaining representative.

At the oral argument, counsel for the Company drew attention to efforts made in Congress, such as the Green-Lucas Bill and similar measures, to secure the right of soldiers to vote in national elections; and to the President's message on servicemen's voting, submitted to Congress on January 26, 1944, the text of which was incorporated in the Company's brief.

The Board is not unmindful of the fact that employees on military leave retain their status as employees and, therefore, have a real interest in the choice of a bargaining representative. For this reason, our order will provide, as has been the case in the past, that those who appear at the polls in the election shall be allowed to vote, if otherwise eligible.² We are also urged, however, to insure an opportunity for all employees in the armed services to vote by including a provision in the Direction of Election requiring the Regional Director to mail ballots to each such employee. We have canvassed the feasibility of this suggestion and have come to the conclusion that the administrative difficulties noted in *Matter of Wilson & Co., Inc.*³ are even more serious today. With individuals scattered in various units of the armed forces throughout the world, it would be virtually impossible to insure a ballot reaching each man and affording him an opportunity to return it by mail to the Regional Director unless a period of about 3 months was established between the date of the Direction and the final return date. In fact, the very bills in the text of the President's message which the Company cites in support of its position were founded on the premise that to address individual absentee ballots to each soldier and to expect him to return them in time to be counted would be so impracticable that the only plan which could be devised for guaranteeing widespread soldier participation in public elections would be a Federal ballot affording a chance to the troops to vote en masse. No such plan, of course, could be applied to representation cases, since only a tiny fraction of any unit of the armed services would include employees of any given company.

The decision in the *Wilson* case was made shortly after the beginning of the war and was based largely upon our experience with mail balloting of employees in training camps in this country acquired prior to that time. It is readily apparent that the administrative obstacles to mail balloting which then obtained have been multiplied by the greater number of employees in the armed forces at the present time and by the transfer of many of them overseas. Consequently, we feel impelled to adhere to our present policy of permitting only those employees on military leave who present themselves in person at the polls to vote. Our inability to poll all the employees on military leave, however, will not necessarily operate to give permanent status to a bargaining representative chosen in their absence. Unlike selections made in a political election which are operative for a fixed term, the certification of an exclusive bargaining representative does not preclude a reexamination as to the desires of employees. When it is demonstrated that servicemen have returned to their employment in

² See *Matter of Mesta Machinery Company*, 55 N. L. R. B. 57

³ 37 N. L. R. B. 944, 951-2.

sufficient numbers so that they comprise a substantial percentage of the employees in an appropriate unit in which we have certified a collective bargaining representative, a new petition for the investigation and certification of a bargaining agent may be filed with the Board. In this manner employees in the armed forces who were unable to cast a vote will be afforded an opportunity to affirm or change the bargaining agent selected in their absence.

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 Mine Safety Appliances Co., Callery Plant, Callery, 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 Sixth 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 or not they desire to be represented by United Electrical, Radio & Machine Workers of America (C. I. O.), for the purposes of collective bargaining.