

In the Matter of KINCAID MANUFACTURING COMPANY, INC., AND JOHN R. TOOLAN, TRUSTEE IN EQUITY RECEIVERSHIP FOR KINCAID MANUFACTURING COMPANY, INC. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), DISTRICT No. 9

Case No. 4-R-1320.—Decided April 11, 1944

Mr. James P. Haney, of Perth Amboy, N. J., for the Company.

Mr. John J. Spillane, of New York City, for the CIO.

Messrs. Lawrence Carroll and *Wilfred McLeane*, of Newark, N. J., for the I. A. M. and the A. F. L.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, (UAW-CIO), District No. 9, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Kincaid Manufacturing Company, Inc., and John R. Toolan, Trustee in Equity Receivership for Kincaid Manufacturing Company, Inc., Perth Amboy, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. Said hearing was held at Perth Amboy, New Jersey, on February 23, 1944. The Company, the CIO, International Association of Machinists, Local Lodge 367, District 47, herein called the I. A. M.,¹ and American Federation of Labor, herein called the A. F. L., appeared and participated. The Sheet Metal Workers International Association, herein called the S. M. W., and Federal Labor Union No. 21792, AFL, were served with copies of the Notice of Hearing but did not appear. All parties were afforded full opportunity to be heard, to examine and

¹ During the hearing, the I A M withdrew its appearance and took no further part in the proceeding

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 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

Kincaid Manufacturing Company, Inc., a New Jersey corporation, is engaged in the manufacture of high pressure gas cylinders, submarine valves, and sheet metal parts for invasion barges, at its plant in Perth Amboy, New Jersey. During the the fiscal year ending September 30, 1943, the Company used raw materials such as mild steel HR plate and carbon steel, valued at approximately \$350,000, of which approximately 75 percent was provided by prime contractors located in the State of New Jersey. The point of origin of this raw material was the Commonwealth of Pennsylvania. During the same period, the Company sold various finished products, valued at approximately \$792,300, of which 25 percent was shipped to points outside the State of New Jersey. On or about April 19, 1943, Warren C. Graham and John R. Toolan were appointed Trustees in Equity Receivership for the Company, by the United States District Court for the District of New Jersey; on December 4, 1943, by order of said Court, John R. Toolan was named sole Trustee.

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

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), District No. 9, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

American Federation of Labor is a labor organization admitting to membership in its affiliates, employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that a question concerning representation has arisen in that, on or about December 4, 1943, the CIO claimed to represent a majority of certain of the Company's employees and that the Company declined to recognize the CIO or any other labor organization as exclusive bargaining representative until the Board determines what, if any, labor organization does in fact represent a majority of the Company's employees within an appropriate unit.

A statement of a Field Examiner, introduced into evidence at the hearing, and a statement of the Trial Examiner made at the hearing, indicate that the A. F. L. and the CIO each represents a substantial number of employees in the unit hereinafter found appropriate.²

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 CIO contends that the appropriate unit should include all employees engaged in productive, non-productive, and maintenance operations, excluding office and supervisory employees, and any journeymen sheet metal workers and apprentices whom the Company may employ. The Company and the A. F. L. are in general agreement with the proposed unit, but they would include journeymen sheet metal workers and apprentices.³

It appears that from April 1943 to February 1944, the Company had in its employ approximately 35 journeymen sheet metal workers and apprentices, and that there is a possibility it may reemploy a number of such employees in the near future. When there were such employees at the plant, they were engaged in production work on sheet metal parts for invasion barges. Although they worked in rooms which were to some extent separated from the rest of the plant, the evidence discloses that there was substantial intermingling of sheet metal workers with other production employees. Since the proposed unit consists of production and maintenance employees, we perceive no reason why the sheet metal workers who when employed are an integral part of the production staff, should be excluded from the unit.⁴

Accordingly, we find that all employees engaged in productive, non-productive, and maintenance operations, including journeymen sheet metal workers and apprentices, but excluding office employees, foremen, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in

² The Field Examiner reported that the CIO submitted 60 authorization cards allegedly bearing the signatures of employees in the unit hereinafter found appropriate; that 51 of said cards were undated and 9 bore dates in December 1943. He further reported that the A. F. L. submitted 82 authorization cards, of which 56 were undated, and the remainder bore dates in 1940, 1941, and 1943.

The Trial Examiner stated that the A. F. L. submitted 20 additional authorization cards, all of which bore apparently genuine original signatures, and dates in February 1944. As of December 12, 1943, there were 139 employees in the unit hereinafter found appropriate.

³ At the hearing, the A. F. L. was apparently in complete agreement with the CIO's proposed unit. Thereafter, in its brief, a copy of which was sent to the CIO, it changed its former apparent position and now seeks to include sheet metal workers and apprentices in the unit.

⁴ During part of the period when the Company employed sheet metal workers, the S. M. W., affiliated with the A. F. L., was informally recognized by the Company as their exclusive-bargaining representative. The S. M. W. was served with a copy of the Notice of Hearing, but failed to appear.

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.⁵

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.

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 Kincaid Manufacturing Company, Inc., and John R. Toolan, Trustee in Equity Receivership for Kincaid Manufacturing Company, Inc., Perth Amboy, New Jersey, 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 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 International Union,

⁵ The A F L stated in its brief that, if successful in the election hereinafter directed, it intends to divide the employees participating therein into craft groups, according to the jurisdiction of several of its affiliated craft unions. We assume that, by this projected division, the A F L does not contemplate that the Company be required to bargain on the basis of any unit other than the single plant-wide unit which the A F L has requested or with any labor organization other than the one which may be certified as a result of this proceeding. If the A F L wins the election, it will be certified as the exclusive bargaining representative of a unit comprising all employees engaged in productive, non-productive, and maintenance operations, and the Company will have the right to insist on dealing directly with the A F L on the basis of that single unit.

United Automobile, Aircraft & Agricultural Implement Workers of America, (UAW-CIO), District No. 9, affiliated with the Congress of Industrial Organizations, or by the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.