

In the Matter of FRED'K. H. LEVEY CO., INC., and CONGRESS OF  
INDUSTRIAL ORGANIZATIONS

*Case No. 13-R-2231.—Decided April 13, 1944*

*Fyffe & Clarke, by Mr. Albert J. Smith, of Chicago, Ill., for the Company.*

*Mr. James Doherty, Jr., of Chicago, Ill., for the Union.*

*Mr. Irving Rogosin, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Fred'k. H. Levey Co., Inc.,<sup>1</sup> Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at Chicago, Illinois, on January 20, 1944. The Company and the Union 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. 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

Fred'k. H. Levey Co., Inc., is a New York corporation maintaining offices or manufacturing plants in New York and Brooklyn, New York; Monmouth Junction, New Jersey; Philadelphia, Pennsylvania;

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<sup>1</sup> Designated in the petition as "Frederick H Levey Co., Inc." It was stipulated at the hearing that the correct name of the company is as above captioned.

Springfield, Ohio; and Chicago, Illinois. The plant here involved is the Chicago plant. It is engaged in the manufacture and distribution of printers' inks. During the year 1943, the Company purchased raw materials valued in excess of \$50,000, over 95 percent of which was shipped to its plant from points outside the State of Illinois. During the same period, finished products valued in excess of \$50,000, were produced, more than 65 percent of which was shipped to 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

Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about December 20, 1943, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request demanding that it be certified by the National Labor Relations Board.

A statement of a Board agent, 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

It was agreed by both the Company and the Union that a unit consisting of all production and maintenance employees, including janitors, leaders and "working supervisors," but excluding supervisory, office and laboratory employees, engineers, guards, and watchmen who devote more than 50 percent of their working time to watchman duties, constitute an appropriate unit for the purposes of collective bargaining.

1. *Leaders*: There are two leaders in the production department, each of whom is in charge of a crew of two to four men. They are principally engaged in production work, under the direction of working supervisors, discussed below. Like "working supervisors" they

<sup>2</sup> The Field Examiner reported that the Union presented 36 authorization cards bearing apparently genuine original signatures; that the names of 22 persons appearing on the cards were listed on the Company's pay roll of December 22, 1943, which contained the names of 36 employees in the appropriate unit; and that the cards were dated December 1943.

are usually chosen from among the older and more experienced employees and, in addition to their regular work, assist in instructing new employees in their duties. Although they are paid 5 cents an hour more than the highest paid employee under their supervision, they have no authority to effect changes in the status of employees or effectively recommend such action.

2. *Working Supervisors*: The employees designated as "working supervisors" are employed under the direction of the single foreman in the plant, who is in turn directly responsible to the plant manager. Their wages are from 5 to 15 cents an hour more than those of leaders and they spend the major portion of their time in manual work with production employees, under the direction of the foremen. They assign the work to men in their group, keep machinery in working order and observe the work of those under them. They have no authority to effect any changes in the status of employees under them, or effectively recommend such action.

We find that the leaders and "working supervisors" do not fall within our usual definition of supervisory employees, and we shall, therefore, include them within the appropriate unit.

We find, in substantial agreement with the stipulation of the parties, that all production and maintenance employees, including janitors, leaders, and "working supervisors," but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and excluding all office and laboratory employees, engineers, guards, and watchmen who devote more than 50 percent of their working time to watchmen's duties, 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 be resolved by means of an election by secret ballot. The Company urges that all employees within the appropriate unit who are in the armed forces of the United States be permitted to vote by mail. The Union declined to take any position other than that the matter was one to be determined by the Board. Since, as we fully stated in *Matter of Mine Safety Appliances Co., etc.*, 55 N. L. R. B. 1190, Case No. 6-R-859, it is administratively impracticable to provide for mail balloting of employees on military leave who are unable to appear at the polls and a safeguard will be established for their interests, only those employees in the armed forces of the United States who present themselves in person at the polls will be permitted to vote.

We shall direct that those eligible to vote shall be 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 Fred'k. H. Levey Co., Inc., Chicago, 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 Thirteenth 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 Congress of Industrial Organizations, for the purposes of collective bargaining.

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