

In the Matter of CLARK EQUIPMENT COMPANY and LOCAL 468, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO)

Case No. 7-R-1694.—Decided April 25, 1944

Mr. G. Frank Killeen, of Lansing, Mich., *Mr. George Spatta*, *Mr. L. L. Lyons*, *Mr. C. H. King* and *Mr. Jack Burks*, of Buchanan, Mich., for the Company.

Mr. Thomas W. Flynn and *Mr. Harold E. Bullen*, of Buchanan, Mich., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 468, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Clark Equipment Company, Buchanan, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harold A. Crane-field, Trial Examiner. Said hearing was held at Niles, Michigan, on March 28, 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

The Company is engaged in various cities in Michigan in the manufacture of tractors, axle housings, tools, and other articles. We are

here concerned only with the Buchanan, Michigan, plant. During 1943 the Company used at this plant materials valued in excess of \$5,000,000; more than 50 percent of which was brought to its plant from sources outside the State of Michigan, and manufactured finished products about 55 percent of which was shipped to points outside that State.

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

II. THE ORGANIZATION INVOLVED

Local 468; International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

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

The Company asserts that timekeepers, whom the Union seeks to represent, are not employees within the meaning of the Act, on the ground that they are "confidential employees," and, further, that the Union, which also represents the Company's production and maintenance employees, had agreed not to receive timekeepers into its membership. The Company's position in the first respect is amplified by its contention that all members of the "office staff" are confidential employees, and that a "concept" of "office staff versus the factory staff is involved." We disagree. Office and clerical employees are no less entitled to exercise rights under the Act than production and maintenance employees. Timekeepers are likewise clearly entitled to exercise such rights.¹ With reference to the second ground advanced by the Company, the record before us does not support its assertion that the Union has agreed to exclude the timekeepers from its membership.² Nothing before us bars this investigation of representatives.³

¹ See e. g., *Matter of Bohn Aluminum & Brass Corp.*, 47 N. L. R. B. 1229.

² See also *Matter of Packard Motor Car Co.*, 47 N. L. R. B. 932, and cases cited therein.

³ The Company also argues that timekeepers possess information concerning the Company's operations which they could divulge to others including the Company's competitors, to the detriment of its business operations. We are not persuaded that union membership of employees is incompatible with the full and honest performance of their duties. Moreover, the Company through its power to discipline and discharge, can effectively control its employees' conduct in that respect. We find no merit to this contention.

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.⁴

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 a unit composed of all timekeepers at the Company's Buchanan plant, excluding supervisory employees and confidential clerks in the pay-roll department. The Company asserts that the unit sought by the Union is inappropriate, mainly on the grounds which we have found to be without merit, that they are not employees under the Act, and that they are "confidential" employees. The employees whom the Union would include in the unit are ordinary full-time timekeepers performing the usual functions of that classification of employee. The Union specifically excludes from its unit confidential clerks in the pay-roll department who have access to confidential pay-roll information and who compute the pay of individual employees.

We see no reason why a unit of timekeepers would not be appropriate.⁵

We find that all full-time timekeepers at the Company's Buchanan plant, 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, 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 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-

⁴ The Field Examiner reported that the Union submitted 17 authorization cards, 13 of which bore apparently genuine original signatures of persons appearing on the Company's pay roll of February 2, 1944, which contained the names of 19 employees in the alleged appropriate unit.

⁵ While the Company's position in the following respect is not wholly clear, it also appears to argue that timekeepers are part of the production categories at the plant and should not be placed in a separate unit from the production and maintenance employees. As stated above, the Union is the collective bargaining representative of all the Company's production and maintenance employees. It is willing to represent the timekeepers in either a separate unit or as part of the over-all production and maintenance unit. We shall for the present include the timekeepers in a unit apart from the production and maintenance employees.

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 Clark Equipment Company, Buchanan, Michigan, 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 Seventh 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 the 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 Local 468, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations for the purposes of collective bargaining.