

In the Matter of COLE-HERSEE COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L.

Case No. 1-R-1796.—Decided May 18, 1944

Messrs. Benjamin Levin and Edward L. Schwartz, of Boston, Mass., for the Company.

Mr. John J. Regan, of Boston, Mass., for the I. B. E. W.

Messrs. Leonard C. Lewin and Arthur R. Hannigan, of Boston, Mass., for the U. E.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Electrical Workers, A. F. of L., herein called the I. B. E. W., alleging that a question affecting commerce had arisen concerning the representation of employees of Cole-Hersee Company, South Boston, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leo J. Haloran, Trial Examiner. Said hearing was held at Boston, Massachusetts, on March 17, 1944. The Company, the I. B. E. W., and United Electrical, Radio & Machine Workers of America, C. I. O., herein called the U. E., 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 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

Cole-Hersee Company is a Massachusetts corporation operating a plant at South Boston, Massachusetts, where it is engaged in the manufacture of electric switches and other devices used in military vehicles.

During 1943 the Company purchased raw materials valued in excess of \$1,000,000, approximately 90 percent of which was shipped to it from points outside the State of Massachusetts. During the same period the Company manufactured products valued in excess of \$1,000,000, about 90 percent of which was shipped to points outside the State of Massachusetts.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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 February 21, 1944, the I. B. E. W. requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request until such time as the I. B. E. W. is certified by the Board.

On May 19, 1941, the Company and the U. E. entered into an exclusive bargaining contract. The contract expired on March 31, 1943. Prior to the expiration of the contract, the Company and the U. E. entered into negotiations with respect to a new agreement and certain disputed terms of the proposed new contract are pending before the National War Labor Board. However, no new agreement between the U. E. and the Company has ever been signed. The U. E. contends that its contract of May 19, 1941, together with the negotiations for a new agreement, constitute a bar to the present proceeding. A collective bargaining agreement which has not been reduced to writing and signed does not constitute a bar to a determination of representatives.¹ This case is not comparable to those recent cases in which we declined to order an election where, shortly following certification or recognition and prior to obtaining a contract, the recognized representative resorted to the processes of the National War Labor Board.² Thus, we find there is nothing to preclude a present determination of representatives.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the I. B. E. W. represents a

¹ *Matter of Encor, Inc.*, 46 N. L. R. B. 1035

² See *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268, and cases therein cited.

substantial number of employees in the unit hereinafter found to be appropriate.³

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 I. B. E. W. urges that all employees of the Company, excluding executives, supervisors, office and clerical employees, and guards, constitute an appropriate unit. The Company stated that it agreed with this contention. The only controversy with respect to the unit concerns guards. The U. E. would include this class of employees in the unit.

The Company employs two guards who were hired at the request of the United States Army Ordnance Department. They carry firearms and are stationed at the entrances to the plant. The Company did not employ any guards at the time it entered into the 1941 agreement with the U. E. and the U. E. did not attempt to bargain on behalf of such employees during the life of that contract. Under all the circumstances, we shall exclude the guards from the unit.

We find that all employees of the Company, excluding executives, office and clerical employees, guards, and all supervisory employees who have the 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 means of 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.⁴

³ The Field Examiner reported that the I B E W. presented 170 authorization cards. There are approximately 275 employees in the appropriate unit. The U E did not present any evidence of representation but relies upon the above-mentioned contract as evidence of its interest in the instant proceeding.

⁴ On or about April 3, 1944, the U E filed a motion requesting that no election be ordered until on or after May 17, 1944, on the ground that not until then would the effects of alleged unfair labor practices be dissipated. The U E. filed charges on March 11, 1944, which were settled by stipulation on March 17, providing for the posting of notices by the Company for 60 days and the withdrawal of the charges upon expiration of that period. The Regional Director has reported that the Company has complied with the settlement agreement. An election, therefore, may appropriately be held.

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 Cole-Hersee Company, South Boston, Massachusetts, 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 First 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 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 they desire to be represented by International Brotherhood of Electrical Workers, A. F. of L., or by United Electrical, Radio & Machine Workers of America, C. I. O., 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.