

In the Matter of KEN-RAD TUBE & LAMP CORPORATION and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (C. I. O.)

Case No. 14-R-921.—Decided May 29, 1944

Mr. William Sentner, of St. Louis, Mo., and *Miss Mary Sweat*, of Tell City, Ind., for the C. I. O.

Mr. Peter G. Noll, of Cincinnati, Ohio, and *Mr. McKinley Ralston*, of Owensboro, Ky., for the A. F. L.

Mr. A. Sumner Lawrence, 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 C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Ken-Rad Tube & Lamp Corporation, Tell City, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Rayburn L. Hackler, Trial Examiner. Said hearing was held at Tell City, Indiana, on May 10, 1944. The C. I. O. and United Automobile Workers of America, A. F. L., herein called the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ 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

Ken-Rad Tube & Lamp Corporation, a Kentucky corporation, has its principal office and place of business at Owensboro, Kentucky,

¹ The Company, although served with Notice of Hearing, did not enter an appearance or participate in the hearing.

where it is engaged in the manufacture and sale of incandescent receiving tubes.² In addition to its Owensboro plants, the Company also operates four other plants in various sections of Kentucky and Indiana, including a plant at Tell City, Indiana, the only plant involved in this proceeding. At its Tell City plant, which has recently been placed in operation on a productive basis following an earlier period of development and research, the Company is engaged in the manufacture of glass tubes and assembled tube mounts under exclusive contracts with an agency of the United States Government. During the period from April 10 to May 10, 1944, the Company shipped from its Owensboro plants for use at its Tell City plant raw materials valued at approximately \$75,000. During the same period, the Company shipped from its Tell City plant to its Owensboro plants finished products valued at approximately \$36,000.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS 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.

United Automobile Workers of America is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about February 26, 1944, the C. I. O., claiming majority representation of the Company's employees in its Tell City plant, requested in writing that the Company arrange a conference for the purposes of collective bargaining. The Company declined to recognize or bargain with the C. I. O. unless and until it had been certified by the Board.

While as noted above the Company did not appear or participate at the hearing, it addressed a letter to the Board in which it contended that, in view of the possession and control exercised by the United States Army over its plants and business operations, the Company was no longer the employer of the employees concerned and could not properly participate in the present proceeding. The record reveals, however, that the executive order supporting the present occupation of the Company's facilities does not purport to affect

² At the date of the hearing, the business of the Company was in the temporary possession of the United States Army by virtue of an executive order issued to prevent a threatened interruption in operations as the result of a labor dispute.

either the Company's ownership interest in its properties or the employment relationship between the Company and its employees. We find, accordingly, that the Company and not the United States Government is the employer of the employees herein involved, within the meaning of Section 2 (2) of the Act. Further, the United States Army has expressly recognized, and we find, that the Company's position with respect to the present proceeding is in no way affected by the fact that its properties are temporarily in the possession of an agency of the United States Government.³

The A. F. L. contends that the present proceeding is barred by reason of an outstanding collective bargaining agreement between the Company and the A. F. L. covering the employees herein concerned at the Tell City plant. The contention of the A. F. L. appears for the first time in its brief filed since the date of the hearing. At the hearing, the A. F. L. made no contention and introduced no evidence of any outstanding agreement covering the Tell City employees. The agreement now asserted as a bar bears a date subsequent to the date of the hearing. In view of the fact that the agreement in question was executed with full knowledge of the C. I. O.'s claim to represent the employees of the Tell City plant as set forth in these proceedings, we find that the agreement is not a bar to a present determination of representatives.⁴

A statement of a Field Examiner for the Board, together with other evidence introduced at the hearing, indicates that the C. I. O. and the A. F. L. each represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 C. I. O. contends that all production and maintenance employees of the Company at its Tell City plant including departmental maintenance men, factory clerks, and cafeteria employees, but excluding plant-protection employees, office employees, timekeepers,

³ See *Matter of Glen Alden Coal Co v N. L. R. B.*, (C. C. A. 3), decided January 31, 1944, 141 F (2d) 47.

⁴ See *Matter of Ecor, Inc.*, 46 N L R B 1035.

⁵ The Field Examiner reported that the C. I. O. had submitted 219 designations of which 197, dated between October 1943 and March 1944 including 1 undated, bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll of March 4, 1944, containing 340 names within the claimed appropriate unit.

In addition to the report of the Field Examiner, the Trial Examiner stated at the hearing that the A. F. L. had submitted 46 membership applications, of which 30, dated with one exception in February 1944, bore the apparently genuine original signatures of persons whose names appeared on the said pay roll.

nurses, engineering department employees, foremen, assistant foremen, instructors, cafeteria manager, and all other supervisory employees, constitute an appropriate unit. The A. F. L., while in general agreement as to the employees proposed for inclusion and exclusion, contends that a unit confined to the employees of the Tell City plant is inappropriate.

The record discloses that notwithstanding an integrated Company organization covering all plants of the Company including the Tell City plant, the latter plant is under the supervision of a separate manager and has numerous facilities for the production and shipment of articles, independent of the similar facilities existing at the other plants of the Company. In addition thereto, it appears that while the A. F. L. has been certified as the bargaining representative for similar employees at the Owensboro plants,⁶ there is no history of collective bargaining upon an over-all company basis.⁷ Under the circumstances and in view of the geographical separation of the Tell City plant⁸ and the infrequency of transfers of employees between plants, we are of the opinion that a unit confined to the employees of the Tell City plant is appropriate for the purposes of collective bargaining.⁹

We find, substantially in accordance with the agreement of the parties, that all production and maintenance employees of the Company at its Tell City, Indiana, plant, including departmental maintenance men, factory clerks, and cafeteria employees, excluding plant-protection employees, office employees, timekeepers, nurses, engineering department employees, foremen, assistant foremen, instructors,¹⁰ cafeteria manager, 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 purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.¹¹

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

⁶ See *Matter of Ken-Rad Tube & Lamp Corporation*, 43 N. L. R. B. 905

⁷ The record discloses that the employees of the Tell City plant have been the subject of a separate decision by the National War Labor Board under a petition filed by the Company for the establishment of wage rates at the Tell City plant.

⁸ The evidence discloses that the Tell City, Indiana, plant is situated approximately 31 miles from the Company's main plants at Owensboro, Kentucky

⁹ See *Matter of Charles H. Bacon Company*, 54 N. L. R. B. 703; *Matter of Mines Safety Appliances Company, Callery Plants*, 55 N. L. R. B. 1190

¹⁰ It appears from the evidence that instructors occupy positions of supervisory-employees within the meaning of our usual definition

¹¹ The composition of the present unit is in harmony with the previous findings of the Board with respect to units among the Company's employees. See *Matter of Ken-Rad Tube & Lamp Corporation*, 42 N. L. R. B. 1235; 50 N. L. R. B. 1010

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.

The Company employs approximately 60 employees who work regularly several hours each day and part time on Saturdays. They consist largely of high school students who go to school part of the day; and who are being trained by the Company to fill permanent full-time positions when and if they are at liberty to accept employment of this type. All such employees are carried on the regular pay roll and are considered by the Company as regular employees. The C. I. O. urges that these part-time employees be deemed ineligible to vote while the A. F. L. contends that they should be included among the employees eligible to vote at the election. Employees who do sufficient work to give them an interest in the conditions of employment also have a sufficient interest in the outcome to entitle them to vote in an election. In view of the substantial amount of work regularly performed by the part-time employees herein concerned and the reasonable expectations of such workers with respect to future full-time employment at the Company's Tell City plant, we find that they have sufficient interest in the present election to entitle them to a voice in the choice of a bargaining representative. We find, therefore, that the part-time employees hereinabove referred to are eligible to vote in the election.¹²

The C. I. O. and the A. F. L. request that they appear on the ballot as "UE-CIO" and as "UAW-AFL," respectively. The requests are hereby granted.

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 Ken-Rad Tube & Lamp Corporation, Tell City, Indiana, 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 Fourteenth 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

¹² See *Matter of Vermont Structural Steel Corp.*, 53 N. L. R. B. 1178; *Matter of Amboy Milk Products Company*, 56 N. L. R. B. 59.

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 UE-CIO or by UAW-AFL, for the purposes of collective bargaining, or by neither.