

In the Matter of ZENITH RADIO CORPORATION *and* EMPLOYEES' ASSOCIATION OF ZENITH RADIO

Case No. 13-R-2375.—Decided May 30, 1944

Mr. Irving Herriott, of Chicago, Ill., for the Company.

Winston, Strawn & Shaw, by *Messrs. Frank B. Gilmer and G. B. Christensen*, of Chicago, Ill., for the Union.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Employees' Association of Zenith Radio, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Zenith Radio Corporation, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mozart G. Ratner, Trial Examiner. Said hearing was held at Chicago, Illinois, on April 11, 1944. The Company and the Union appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Zenith Radio Corporation, an Illinois corporation, is engaged at a plant in Chicago, Illinois, in the production and sale of hearing

¹ A waiver signed by the Union, introduced into evidence at the hearing, states that the Union waives the right to protest any election held in the instant proceeding on any ground set forth in Case No. 13-C-2377.

aids and radio and radar equipment. The Zenith radionic hearing aids are sold to the general public throughout the United States. The radio and radar equipment manufactured by the Company are used exclusively by the armed forces of the United States and its allies. The Company's purchases of raw materials exceed \$1,000,000 each year, of which 75 percent is shipped to the Company from points outside the State of Illinois. The Company's sales of finished products exceed \$1,000,000 annually, of which 80 percent is shipped to points outside the State of Illinois.

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

II. THE ORGANIZATION INVOLVED

Employees' Association of Zenith Radio is an, unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about February 17, 1944, the Union requested the Company to recognize it as the exclusive bargaining representative of employees within an alleged appropriate bargaining unit. The Company refused to accord the Union such recognition on the ground that the bargaining unit requested was inappropriate.

A statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, as supplemented by a statement made on the record by the Trial Examiner, indicates that the Union represents a substantial number of employees within the unit hereinafter found to be 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 Union contends that all employees of the Company's engineering department who regularly perform the work of draftsmen and who make detailed sketches for manufacturing purposes, excluding all supervisors with authority to hire, promote, discharge, discipline, or effectively recommend such action, and all other employees of the Company, constitute an appropriate bargaining unit. The

² The Field Examiner's report, as supplemented by the Trial Examiner's statement, shows that the Union submitted 55 authorization cards bearing the apparently genuine original signatures of persons whose names appear on a current pay roll of the Company, introduced into evidence at the hearing, which lists approximately 65 employees in the unit alleged by the Union to be appropriate.

Company denies the appropriateness of the unit sought by the Union, arguing that the functional correlation of the work performed by all employees in the engineering department militates against arbitrarily establishing a separate bargaining unit comprised of only a part of the employees in the department.

The Union is the present reconized bargaining representative of all hourly paid, production and maintenance employees of the Company. It also represents, in a separate bargaining unit, all hourly paid guards employed by the Company. All employees of the engineering department are paid a salary.

The engineering department is under the supervision of the Company's vice-president in charge of engineering, an assistant vice president and chief engineer, and a second assistant vice president. The department is, in effect, divided into 2 divisions, the electrical division and the mechanical division. The electrical division is headed by 5 division chiefs, the mechanical division by 6 division chiefs, while 1 division chief is in charge of specifications, blueprints, and parts in both divisions. The electrical division includes 32 electrical engineers, who are technicians and perform little or no drafting work, 18 electrical project engineers, 6 associate electrical project engineers, 21 assistant electrical project engineers, and 11 electrical engineering specialists who are research consultants. Each of these groups is engaged primarily in electrical research and development, and, while the electrical project engineers and their assistants and associates at times do some drafting work, their sketches are seldom, if ever, used for manufacturing purposes, but are transferred to the mechanical division for detailed draftsmanship work prior to production. The Union would exclude all employees in the electrical division from its proposed unit. The engineering department also contains a model shop which employs approximately 24 model makers who work under the supervision of 4 model shop superintendents. These employees produce electrical models from the specifications set forth in the drawings produced by the employees in the mechanical division. The model shop also regularly employs about 55 hourly paid employees who are on the factory pay roll. These employees create mechanical models from the drawings made in the mechanical division. Since none of these model shop employees do any drafting work, the Union does not desire to have them included in its proposed unit.

The mechanical division of the engineering department employs approximately 12 mechanical project engineers, 16 associate project engineers, 11 assistant project engineers, 14 mechanical draftsmen, and 12 apprentice draftsmen. The Union's proposed unit comprises the foregoing classifications of employees in the mechanical division of the engineering department. The Union contends that all these

employees regularly perform the work of draftsmen in making detailed sketches and mechanical drawings which are used for manufacturing purposes. The duties performed by this group of employees, argues the Union, sufficiently distinguish them from all other employees in the engineering department to warrant their establishment as a separate bargaining unit. The Company, as previously noted, does not agree.

The function of the engineering department is to develop and design the electrical and mechanical features of the products manufactured by the Company. Each new electrical unit or product to be manufactured is called a project. When a new project is contemplated, either the vice-president in charge of engineering or the chief engineer appoints an electrical and a mechanical division chief to take charge of the project. Each of these division chiefs selects the particular electrical and mechanical project engineers, associate project engineers, and assistant project engineers to work with him on the project. The necessary draftsmen and apprentice draftsmen are also assigned to each new project. This entire group of engineering department employees works on a single project until it is completed. The electrical division employees work out the electrical details while the mechanical division employees are concerned only with the mechanical aspects of the project. The mechanical division produces the final detailed drawings from which the finished product is manufactured. It appears that the basis for distinction between project engineers, associate project engineers, assistant project engineers, and draftsmen in the mechanical division is their varying degrees of skill as draftsmen and ability to handle more difficult work. All convey their ideas through the medium of mechanical drawings, and all use drafting instruments and other recognized tools of their profession. It also appears that the titles bestowed upon these employees is the Company's method of grading them according to their background, experience, and skill in their profession.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, we are of the opinion and conclude that the employees sought by the Union herein constitute a homogeneous group of technical and professional employees engaged in work sufficiently identifiable from that performed by other employees in the Company's engineering department to warrant establishment as a separate bargaining unit. There remains for consideration the specific composition of the appropriate unit.

The Company contends that the mechanical project engineers exercise supervisory authority over other employees in the mechanical division and should therefore be excluded from any unit which the Board may find to be appropriate. On the other hand, the Union

desires to include the mechanical project engineers. Although the evidence on this point is in sharp conflict, two associate project engineers-mechanical and one project engineer-mechanical testified that they had not been advised that the project engineers possessed the authority to effect changes in the status of employees or effectively recommend such action. In fact, these witnesses were apparently unaware of their exact titles before seeing the classified pay roll prepared by the Company and introduced in evidence at the hearing. Moreover, it appears from the record that the project engineers-mechanical are not rated as executives for overtime pay purposes under the Fair Labor Standards Act of 1938. We are of the opinion and find that the duties and authority of the project engineers-mechanical do not bring them within the Board's customary definition of supervisory employees. Accordingly, we shall include them in the appropriate unit.

We find that all salaried employees employed in the engineering department of the Company's Chicago plant who regularly perform the work of draftsmen and who make detailed sketches for manufacturing purposes, including mechanical project engineers, associate mechanical project engineers, assistant mechanical project engineers, draftsmen and apprentice draftsmen, but excluding division chiefs 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.

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 payroll 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 Zenith Radio Corporation, 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 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 Employees' Association of Zenith Radio, for the purposes of collective bargaining.