

In the Matter of AMERICAN BROACH & MACHINE COMPANY and LOCAL 38, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

Case No. 7-R-1716.—Decided June 9, 1944

Mr. Louis E. Burke, of Ann Arbor, Mich., and *Mr. G. Franklin Killeen*, of Lansing, Mich., for the Company.

Messrs. W. A. Magnor and *Emerson Barriger*, of Jackson, Mich., and *Mr. Kenneth Sisson*, of Ann Arbor, Mich., for the Union.

Mrs. Margaret L. Fassig, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 38, 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 American Broach & Machine Company, Ann Arbor, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Max Rotenberg, Trial Examiner. Said hearing was held at Ann Arbor, Michigan, on May 5, 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 Company moved to dismiss the petition because of the pendency of proceedings in which it is charged with unfair labor practices.¹ The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial

¹ Case No. C-2276, reported at 45 N. L. R. B. 241. The Board on October 31, 1942, found that the Company had engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3), and the Board's Order was enforced by the decree of the Sixth Circuit Court of Appeals on December 17, 1943. On May 9, 1944, the American Broach Employees Protective Association filed a petition for certiorari in the Supreme Court.

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

American Broach & Machine Company, which is a Michigan corporation and a wholly owned subsidiary of Sunstrand Machine Tool Company, has its principal place of business in Ann Arbor, Michigan, where it is engaged in the manufacture and sale of broaches and broaching machinery. The Company annually purchases raw materials valued in excess of \$200,000, for use in its manufacturing operations and approximately 15 percent of such raw materials is purchased by the Company from sources outside the State of Michigan and shipped to the Company at its plant in Ann Arbor, Michigan. The company annually manufactures at its Ann Arbor plant broaches and broaching machinery valued in excess of \$500,000, of which approximately 50 percent is sold and shipped to points outside the State of Michigan. The broaches and broaching machinery now being produced by the Company are furnished almost entirely to numerous firms producing guns and other military equipment for the prosecution of the war.

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

II. THE ORGANIZATION INVOLVED

Local 38, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, 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 its employees until the Union has been certified by the Board in an appropriate unit.

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.²

² The Field Examiner reported that the Union submitted 72 designation cards; that the Company's pay roll contained the names of 205 employees in the appropriate unit; and that the cards were dated: 1 in November 1943, 60 in December 1943, 2 each in January and March 1944, and 7 undated.

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 alleges that all production and maintenance employees of the Company, including inspectors and instructors, but excluding office and shop clerical employees and supervisory employees with authority to hire, promote, discharge, discipline, or cause changes in the status of other employees or effectively recommend such action constitute an appropriate unit for collective bargaining purposes. Subject to its motion to dismiss the petition herein, the Company agrees with the Union on the unit except that it contends that instructors should be excluded as supervisory employees.

It appears the Company has about 205 employees in the alleged appropriate unit, including 12 persons classified as instructors, who instruct new employees how to operate their machines, or instruct older employees in new operations. The instructors are under the assistant foremen who look to the instructors to see that they keep the other men busy on the machines. If an instructor finds that a man is not capable of doing work on a particular machine, the instructor so advises the assistant foreman and the man is then shifted to another station. In making such shifts, the foremen are guided by the recommendations of the instructors. Also, there is testimony that the Company has hired a number of men who have been recommended by instructors. There is testimony that the rate of pay of the instructors is much higher than that of the other production and maintenance employees. We are of the opinion, and find, that instructors in this Company's plant are supervisory employees within the meaning of our usual definition.

We find that all production and maintenance employees of the Company, including inspectors, but excluding office and shop clerical employees, instructors and all or any 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 find that the question concerning representation which has arisen can best be resolved by an election by secret ballot among employees in the unit found appropriate in Section IV, above.

The Union contends that the Company's pay roll of May 6, 1944, should be used to determine eligibility to vote in the election, due

to an alleged large turn-over of personnel in its employ. The Company did not expect any substantial increase or decrease in its employment program within the next 30 days following the hearing. No special reason appears for departing from our usual practice, and accordingly we shall direct that the employees of the Company eligible to vote in the election shall be those in the appropriate unit who were employed during the pay-roll period immediately preceding this 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 American Broach & Machine Company, Ann Arbor, 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 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 Local 38, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.