In the Matter of MID WEST BODY AND MFG. DIVISION ELECTROGRAPHIC CORPORATION *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Case No. 14-R-924.—Decided June 19, 1944

Mr. E. S. Grumbache, of Paris, Ill., for the Company.

Mr. C. A. Shuey, of Indianapolis, Ind., and *Mr. Charles Hewitt*, of Paris, Ill., for the Carpenters.

Mr. Charles H. Moon, of Terre Haute, Ind., and *Mr. Floyd Morris*, of Paris, Ill., for the Construction Workers.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Brotherhood of Carpenters and Joiners of American, herein called the Carpenters, affiliated with the American Federation of Labor, alleging that a question affecting commerce had arisen concerning the representation of employees of Mid West Body and Mfg. Division Electrographic Corporation, Paris, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blinn, Trial Examiner. Said hearing was held at Paris, Illinois, on May 16, 1944. At the hearing the Trial Examiner granted a motion to intervene made by United Construction Workers of America, affiliated with the United Mine Workers of America, herein called the Construction Workers. The Company, the Carpenters, and the Construction Workers, 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 Construction Workers moved that the petition be dismissed because of a contract between it and the Company. For reasons hereinafter stated, the motion is denied. 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

Mid West Body and Mfg. Division Electrographic Corporation, a Delaware corporation, is engaged in the manufacture, sale, and distribution of truck and trailer bodies, and bomb and torpedo handling equipment. Only its operation at Paris, Illinois, is involved in this proceeding. During 1943 the Company purchased raw materials exceeding $100,000 in value, of which approximately 70 percent was purchased and shipped from outside the State of Illinois to the Paris plant. During the same period the Company sold finished products exceeding $100,000 in value, of which approximately 90 percent was shipped from the Paris plant to points outside the State of Illinois. The Company's operations at present are devoted entirely to the war effort.

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

II. THE ORGANIZATIONS INVOLVED

United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Construction Workers of America, affiliated with the United Mine Workers of America, 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 Carpenters as the exclusive bargaining representative of its employees because of its doubt concerning the majority representation of the Carpenters, and because of its contractural relations with the Construction Workers.

The Company and the Construction Workers executed a contract on November 18, 1942, following a consent election conducted on October 27, 1942. The contract was to be in effect for a period of 1 year, and was automatically renewable from year to year in the absence of notice given 30 days prior to the expiration of any yearly term. On August 27, 1943, the parties amended the contract to provide for wage changes and check-off of union dues. The amended contract was to be in effect until April 30, 1944, and was automatically renewable for yearly periods thereafter in the absence of 30 days' notice prior to April 30, of any year. On February 27, 1944, the

Carpenters notified the Company of its claim of representation. Upon the Company's refusal to grant it recognition, the Carpenters filed its petition in this proceeding on March 3, 1944. On April 30, 1944, the Company and the Construction Workers executed a second supplemental and amendatory contract, effective until April 30, 1946, and from year to year thereafter.

The Construction Workers asserts its contract as a bar to an investigation concerning representation at this time. However, the Carpenters' claim of representation was made, and its petition was filed, prior to the automatic renewal date of the contract of August 27, 1943, and prior to the execution of the contract of April 30, 1944. We, therefore, find that the contract between the Company and the Construction Workers cannot operate to preclude a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Carpenters represents a substantial number of employees in the unit hereinafter found appropriate.[1]

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 parties are generally agreed that the unit should cover all production and maintenance employees, excluding watchmen and guards, office and clerical employees, timekeepers, stockroom and receiving employees, and supervisory employees.[2] They are in disagreement, however, concerning the janitor, the Company requesting his exclusion, and the Carpenters and the Construction Workers his inclusion.

The Company employs one person classified as a janitor. This employee performs a variety of odd jobs. He cleans the general offices, drives the Company car to perform errands, makes blueprints, and does some photographic work. He was included in the contracts between the Company and the Construction Workers. We shall include the janitor in the unit.

We find that all production and maintenance employees, including the janitor, but excluding watchmen and guards, office and clerical

[1] The Field Examiner reported that the Carpenters submitted 180 application cards; that the names of 143 persons appearing on the cards were listed on the Company's pay roll of March 29, 1944; that there are 289 employees in the unit requested; and that the cards were dated as follows: 1 in January 1944, 86 in February 1944, 39 in March 1944, 15 undated, and 2 improperly dated.

The Construction Workers relies upon its contract to establish its interest in the proceeding.

[2] This unit is substantially the same as the unit covered by the contracts between the Company and the Construction Workers.

employees, timekeepers, stockroom and receiving employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action,[3] 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-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 Mid West Body and Mfg. Division Electrographic Corporation, Paris, 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 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 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 United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor or by United Construction Workers of America, affiliated with the United Mine Workers of America, for the purposes of collective bargaining, or by neither.

[3] The parties are agreed and we find that subforemen, foremen, and all higher ranking supervisory employees fall within the definition of supervisory employees set forth above.