In the Matter of AHLBERG BEARING COMPANY *and* LOCAL 1114, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO

Case No. 13–R–2041.—Decided June 29, 1944

Mr. Keith T. Middleton, of Stamford, Conn., and *Mr. Karl Seyfarth*, of Chicago, Ill., for the Company.

Messrs. Louis Torre and *Henry Meihs*, both of Chicago, Ill., for the Union.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 1114, United Electrical, Radio & Machine Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of the Ahlberg Bearing Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John R. Hill, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 2 and 3, 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 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.

At the commencement of the hearing, the Company moved to dismiss the petition, in effect upon the ground that the issues in the instant proceeding have already been determined by the Board and that the rights of the parties have therefore become fixed.[1] We have

[1] 52 N. L. R. B. 48, in which the Board found that all production and maintenance employees of the Company, excluding clerical employees, administrative office employees, engineers, the electrician, timekeepers, expediters, office scrub women, set-up men, and all supervisory employees constituted an appropriate bargaining unit. In the subsequent election among the employees in this unit, the Union was successful and was thereafter certified by the Board.

decided to deny the motion. The doctrine of *res judicata*, upon which the Company relies, has no application to proceedings under the Act.[2] It is true that orderly administration of the Act requires that there be an end to proceedings instituted before the Board. Consequently, as a matter of sound discretion, we refuse ordinarily to retry previously determined issues, requiring that parties believing themselves to be aggrieved by our decisions make timely motions for reconsideration if they believe that the Board has erred. In the instant proceeding, the issue is a grave one, namely, the determination whether or not a substantial number of employees are supervisors and, therefore, subject to the disabilities of such employees under the Act. For this reason, and in view of the fact that the Union's claim for recognition was made and its petition herein filed prior to our certification in the earlier proceeding, we consider the present petition as tantamount to a motion for reconsideration. The Company's motion is therefore denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Ahlberg Bearing Company is an Illinois corporation with its principal place of business at Chicago, Illinois, where it is engaged in the business of processing metal products and producing antifriction bearings. During 1942 the Company purchased raw materials from points outside the State of Illinois, valued in excess of $100,000. During the same period the Company shipped finished products to points outside the State of Illinois, valued in excess of $2,000,000.

The Company admits, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Local 1114, United Electrical, Radio & Machine 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 the Company's set-up men until the Union has been certified by the Board in an appropriate unit.

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[2] See *National Licorice Co* v. *N. L R. B*, 309 U S. 350, 362, 366; *Matter of Cramp Shipbuilding Company*, 52 N. L. R. B. 309; *Matter of Shell Petroleum Corporation*, 52 N. L. R. B. 313.

A statement of the Trial Examiner at the hearing indicates that the Union represents a substantial number of the employees here involved.[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; DETERMINATION OF REPRESENTATIVES

Although the Union alleged in its petition that all set-up men in the Company's employ constitute an appropriate bargaining unit, at the hearing the Union requested that, if the Board grants an election and the Union wins, the Board should incorporate the set-up men into the existing production and maintenance unit, which is presently represented by the Union. The Company contends that the Board correctly decided in the previous proceeding that set-up men are supervisory employees and therefore should be neither included in the existing unit nor set apart as a separate appropriate unit.

Reexamination of the record in the earlier proceeding reveals that the only testimony pertaining to the status of the set-up men was that of the secretary of the Company. No set-up men testified, in contrast to the situation at the instant hearing in which the testimony of 12 set-up men was taken. The instant proceeding involves the single issue of whether set-up men are supervisory employees, and the record thoroughly covers the evidence pertaining to that issue.

Set-up men set up and adjust machines which are run by unskilled operators. The set-up men begin their work about a half hour before the operators, obtaining instructions from the set-up men or foremen on the preceding shift and setting up the machines so that they will be ready for operation when the operators arrive. They are in charge of varying numbers of machines and are responsible for seeing that the products fabricated by their machines conform to the required specifications. Upon setting up a machine, the set-up men make several samples of the product to see that the machine is properly adjusted and then call an inspector, who examines the samples and either approves or rejects them. After the inspector has approved the samples, the machine is then turned over to an operator. The set-up men usually move from machine to machine, constantly checking to see that the machines are not out of adjustment and that the operators are doing their work properly. It is the duty of the set-up men to instruct and teach the men to operate their machines properly. They make the rounds of their machines at frequent intervals, checking the work of the operators, correcting them when they are making mistakes, and

[3] The Trial Examiner reported that the Union submitted 15 authorization cards bearing apparently genuine original signatures of persons listed by the Company as set-up men and that the Company employs 27 set-up men.

making adjustments on the machines when it appears that such adjustments are necessary. There are generally from 4 to 10 operators on the machines for which a set-up man is responsible. When, on rare occasions, they are asked by the foreman, they sometimes indicate their opinions relative to the ability of operators and report to the foremen facts requiring disciplinary action toward operators. In other instances they decline to express an opinion. The Company has instituted so-called Employee Rating Reports and contends that it has instructed the set-up men to participate in the preparation of these reports, which the Company states serve as the basis for promotions. It appears, however, that only 2 of the 12 set-up men who testified were at all familiar with the nature and purposes of these rating reports, and 6 stated that they had never signed such a report or been consulted with reference thereto. It is significant, in this respect, that the Company's printed instructions on rating employees are addressed to the foremen, with instructions to talk to their assistant or subforeman or "if you have neither, call in the set-up man."

Set-up men were represented for several years by an independent union which had collective bargaining contracts with the Company. The most recent contract with the Company and that labor organization indicates that the Company did not consider set-up men to be supervisory employees.[4] Operators who set up their own machines are paid as much as set-up men, an indication that set-up men are paid for their skill rather than for exercising supervisory authority. They have never been advised by the Company that their duties include the making of recommendations affecting the status of employees.[5] Finally, there is no evidence that set-up men are considered to be supervisory employees by the rank and file employees.

We are satisfied that the alleged supervisory authority of the set-up men is more theoretical than real and that said set-up men are not actually supervisory employees within our usual definition. We shall, therefore, direct an election among the set-up men to determine whether or not they wish to be represented by the Union. In the event that a majority of their number select the Union as their collective bargaining representative, they will have indicated their desire to be part of the appropriate unit presently represented by the Union, and will be part of such unit.

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[4] Although not specifically mentioned in the contracts, set-up men were admittedly included in the bargaining unit, from which supervisory employees were expressly excluded The provisions setting up grievance procedure make no mention of set-up men and require that the initial complaint be presented to a foreman.

[5] There is testimony by company officials that the foremen have been instructed so to inform the set-up men, but there is no evidence that the foremen have ever done so The set-up men denied that they had ever received any such instructions from the Company. We accept the undenied testimony of the set-up men. In one instance mentioned in the evidence in which a set-up man recommended the discharge of an operator (for intoxication), the recommendation was not followed.

We shall accordingly direct that the question concerning representation which has arisen be resolved by an election by secret ballot among all set-up men in the Company's employ, who were employed during the pay-roll period immediately preceding the date of the 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 (a) 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 Ahlberg Bearing Company, 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 all set-up men in the Company's employ 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 Local 1114, United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.