

In the Matter of J. H. WILLIAMS & Co. and UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, LOCAL 64, (CIO)

Case No. 3-R-783.—Decided July 22, 1944

*Kenefick, Cooke, Mitchell, Bass and Letchworth*, by Messrs. *Lyman M. Bass* and *Legrand Kirk*, both of Buffalo, N. Y., for the Company.

*Mr. David Diamond*, of Buffalo, N. Y., for the Union.

*Mr. Joseph C. Wells*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Office and Professional Workers of America, Local 64 (CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of J. H. Williams & Co., Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Examiner. Said hearing was held at Buffalo, New York, on May 18 and 23, 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

J. H. Williams & Co. is a New York corporation engaged in the manufacture and sale of drop forgings and hand tools. The Company operates its only plant and has its principal offices at Buffalo, New York. The Company annually uses raw materials having a total value in excess of \$1,000,000, about one-third of which is shipped to

the Buffalo plant from points outside the State of New York. The Company's annual sales have a total value in excess of \$10,000,000, of which about 90 percent represents shipments to points outside the State. The Company employs approximately 2,000 employees.

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

## II. THE ORGANIZATION INVOLVED

United Office and Professional Workers of America, Local 64, 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.<sup>1</sup>

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 requests in its petition that the Board find appropriate a unit comprised of all office, clerical, and professional employees of the Company, excluding supervisory employees.<sup>2</sup> The Company contends that the employees for whom the Union petitions in this proceeding should comprise two separate units consisting of main office clerical employees and factory clerical employees. The Company further contends that one chemist, two metallurgists, and three time-study employees of the Company should be excluded from the unit or the units which the Board finds to be appropriate.

<sup>1</sup> The Field Examiner reported that the Union submitted 71 application for membership cards; that the names of 66 persons appearing on the cards were listed on the Company's pay roll which contained the names of 215 employees in the appropriate unit; and that 3 of these cards were dated December 1943, 18 dated January 1944, 7 dated February 1944, 36 dated March 1944, and 2 dated April 1944.

Pursuant to a request of the Company made at the hearing, the Trial Examiner, after the hearing, made a check of the cards against the Company's pay roll of clerical employees in the main office, the parties having consented to reserve an exhibit number for his report thereon. The Trial Examiner's report, marked Board Exhibit No. 4, is hereby received in evidence. This report shows that 13 of the cards submitted by the Union bore apparently genuine signatures of employees among the 93 clerical employees in the main office building departments.

<sup>2</sup> The original petition of the Union did not use the word "professional" in its description of the unit requested. At the hearing the Trial Examiner granted the Union's motion to amend its petition to include the word "professional."

The Company recognizes Local No. 1183, United Steelworkers of America (CIO), as the bargaining representative of its production and maintenance workers, including clerical employees in the warehouse and shipping office, but excluding, *inter alia*, die sinkers, who are represented by Local 90, International Die Sinkers Conference, and all the factory and main office clerical employees here involved. The Company and the Union agree that the unit involved in this proceeding should not include any of the employees represented by the organizations named.

The main office clerical employees are hired and supervised by the head of the department of the main office in which they are to be employed. Factory clerical employees are hired through the factory personnel office and in general their work is supervised by production supervisors. Main office clerical employees are paid on a salary basis, while some factory clerical employees are paid on a salary basis and others on an hourly basis. The main office clerical employees and about half of the factory clerical employees use a time clock located at the main office, while the remainder of the factory clerical employees use factory time clocks. The main office clerical employees work at the main office, while the factory clerical employees work in offices located in the various factory buildings. However, the main office building and the factory building of the Company are all located in the Company's plant area, the dimensions of which preclude a geographical separation of employees by more than approximately 350 yards. It is undisputed that both main office and factory clerical employees perform comparable duties requiring similar skill and ability and are subject to the same over-all labor relations control. In view of these facts, it is evident that all the clerical employees can effectively be represented in a single bargaining unit. The differences between the office and factory groups are, in our opinion, insufficient to require their segregation in two separate units. Accordingly, we will include both main office and factory clerical employees in the unit hereinafter found to be appropriate.

Subject to their dispute as to whether there should be one unit or two, the parties stipulated that the appropriate unit should comprise all office and clerical employees including, *inter alia*, draftsmen, the matron, and the nurses, as well as employees in certain other specific categories.<sup>3</sup> The parties further agreed to exclude from the unit executives, supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, and the employees in

---

<sup>3</sup> Namely: the stenographer and the blueprint machine operator in the production engineering department, the stenographer to the chief engineer, the senior order entry clerk, the assistants to the eastern and western sales managers, and the aircraft forging sales manager.

numerous occupational categories listed in Appendix A herein. Among these are lubricating, plant, and product engineers, and many others whose titles indicate that they are either supervisory or confidential employees. We approve the stipulation of the parties with respect to the afore-mentioned inclusions and exclusions.

The chemist and the two metallurgists whom the Company seeks to exclude from the unit are professional employees and the performance of their duties requires a specialized knowledge of scientific or professional subjects. The chemist does analytical work, weighs out materials, makes filtrations and calculations, and compiles necessary data for reports. The two metallurgists are advisers on matters of material control, heat treating, and machine operations, and investigate customers' complaints involving functional failures of the Company's products. The chemist and the two metallurgists are not clerical workers, but are professional employees like the lubricating, plant, and factory engineers whom the parties, apparently on the ground of their professional status, have agreed to exclude. Accordingly, we will exclude the chemist and the two metallurgists from the unit hereinafter found to be appropriate.

The three time-study employees work in the production office where they study factory operations, approve factory methods, and establish production standards and piece rates for factory work performed by production employees. The record does not disclose their rates of pay, degree of skill, or job entrance qualifications. At the hearing counsel for the Company referred to them as "clerks." Although the Company's personnel director testified that the time-study men perform "an important management function," the Company does not contend that they are supervisory employees;<sup>4</sup> nor does it appear that they attend collective bargaining conferences on behalf of the Company,<sup>5</sup> or otherwise act in a confidential capacity in respect to matters relating directly to the problem of labor relations.<sup>6</sup> It is clear that their time studies do not affect in any manner the rates of pay of any of the employees in the unit herein found appropriate.<sup>7</sup> Under these circumstances we see no reason why they may not be represented in collective bargaining, and, since their work is clerical in nature, we shall include them in the unit herein involved.<sup>8</sup>

We find that all office and clerical employees of the Company, including the three time-study employees, draftsmen, the stenographer, and the blueprint machine operator in the production engineering de-

<sup>4</sup> Cf. *Matter of Gar Wood Industries, Inc.*, 41 N. L. R. B. 1156; *Matter of Oliver Farm Equipment Company*, 53 N. L. R. B. 1078.

<sup>5</sup> Cf. *Matter of Oliver Farm Equipment Company*, *supra*.

<sup>6</sup> Cf. *Matter of Creamery Package Manufacturing Co.*, 34 N. L. R. B. 108.

<sup>7</sup> Cf. *Matter of Westinghouse Electric & Manufacturing Co.*, 45 N. L. R. B. 826; *Matter of Westinghouse Electric & Manufacturing Co.*, 54 N. L. R. B. 272.

<sup>8</sup> *Matter of Westinghouse Electric & Manufacturing Co.*, 47 N. L. R. B. 21. See *Matter of John Morrell and Co.*, 52 N. L. R. B. 1300.

partment, the stenographer to the chief engineer, the senior order entry clerk, the matron, the six nurses, and the assistants to the eastern forging, western forging, and aircraft forging sales managers, but excluding the chemist, the two metallurgists, the employees in the categories listed in Appendix A herein, all executives, 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 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 J. H. Williams & Co., Buffalo, New York, 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 Third 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 the 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 United Office and Professional Workers of America, Local 64, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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

## APPENDIX A

*Advertising Department*

- The secretary to the publicity manager
- The assistant to the publicity manager

*Accounting and Statistics Department.*

- The sales statistics clerk
- The assistant to the tabulating supervisor
- The accounts receivable bookkeeper
- The cashier
- The general ledger accountant
- The assistant to the billing supervisor
- The secretary to the secretary-treasurer
- The secretary to the president
- The billing supervisor
- The confidential clerk to the assistant secretary-treasurer
- The stenographer for the credit and collection manager

*Cost and Pay-roll Departments*

- The chief cost accountant
- The forging cost analyst
- The forging die cost analyst
- The pay-roll distribution clerk
- The paymaster
- The assistant to the paymaster
- The head timekeeper
- The two cost clerks

*Forging Sales Department*

- The secretary to the forging sales manager
- The assistant to the general sales manager, forging division

*Mail Department*

- The mail supervisor
- The telephone operator

*Personnel Office*

- The secretary and assistant to the employment manager
- The utility man
- The selective service supervisor
- The assistant to the personnel director
- The clerk

*Purchasing Department*

- The assistant to the purchasing agent

*Production Office*

The scheduler and assistant production control supervisor  
The chief clerk  
Two two schedulers  
The chief dispatcher  
The outside inspector co-ordinator (main office)  
The secretary to the vice-president in charge of operation

*Warehouse and Shipping Office*

The Chief clerk in the warehouse office  
All other employees in the warehouse and shipping office, all of whom are now represented for the purposes of collective bargaining by Local No. 1183, United Steelworkers of America (CIO)

*Tool Sales Division*

The secretary to the vice-president in charge of tool sales  
The senior correspondent  
The two correspondents  
The correspondent in the export section  
The supervisor of the file room  
The head traffic clerk

*Products Engineering Department*

Lubricating engineers  
Plant engineers  
Product engineers  
The chief draftsman