

In the Matter of ZIERICK MANUFACTURING CORP. and DISTRICT 50,
UNITED MINE WORKERS OF AMERICA

Case No. 2-R-4841.—Decided August 24, 1944

Messrs. Raymond M. Paul and J. H. Radlein, both of New York City, for the Company.

Mr. Charles F. Schroeder, of Newark, N. J., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Zierick Manufacturing Corp., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon Novak, Trial Examiner. Said hearing was held at New York City, on July 20, 1944. The Company and the Union appeared, participated, and 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

Zierick Manufacturing Corp., a New York corporation with its principal office and place of business located in New York City, is engaged in the manufacture of metal stampings, including terminals, lugs, eyelets, and tools. During the preceding year the Company purchased raw materials, consisting chiefly of brass, copper, steel, and

lead, for use in its operations, valued at approximately \$250,000, fifty percent of which was shipped to the Company from points outside the State of New York. During the same period the Company produced finished products valued at approximately \$500,000, sixty six percent of which was shipped by it to points outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

District 50, 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 Union as the exclusive bargaining representative of certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union 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 agreed upon the propriety of a unit consisting of all production employees, working foremen, tool and die makers, shipping department employees and maintenance employees engaged by the Company, excluding supervisory employees and office workers.

The Company employs approximately 10 working foremen, whose inclusion within the unit is desired by both the Company and the Union. The record discloses that 9 of these working foremen are in charge of groups ranging from 1 to 26 employees, and that they have authority to hire, discharge and discipline their subordinates and make recommendations affecting their status. Under these circumstances, we find that they are supervisory employees within our customary definition, and we shall exclude them from the unit.²

¹ The Field Examiner reported that the Union submitted 50 application cards of which 38 bore the names of persons appearing upon the Company's pay roll. He further reported that there were 63 employees in the unit proposed by the Union.

² We find that Class, Grossman, Konopka, Behnke, Schon, Milone, Pidvirny, Maccaronio, and Ronda, or persons now occupying their positions, are working foremen.

The tenth employee, Schafer, who the Company asserts is a working foreman, is in charge of the receiving room. Witnesses for the Company testified that this employee also has authority to hire, discharge, and discipline the person working with him in the receiving department. The record discloses, however, that this authority consists of passing on to his fellow worker the orders given to him. This "working foreman" receives 75 cents per hour, 5 cents per hour more than his "subordinate", whereas wages of other working foremen range from 95 cents an hour upward. We are of the opinion that the employee in charge of the receiving department is not a supervisor; we shall include him within the unit.

We find that all production and maintenance employees of the Company, including tool and die makers, shipping department employees, and receiving department employees, but excluding office employees, working foremen, 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Zierick Manufacturing Corp., New York City, 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 Second 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 payroll 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 District 50, United Mine Workers of America, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.