

In the Matter of THE MCFARLANE-EGGERS MACHINERY COMPANY and
INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. L.

Case No. 17-R-869.—Decided August 30, 1944

Mr. John T. Macey, of Denver, Colo., for the Company.

Mr. W. B. Jordan, of Denver, Colo., for the Union.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Association of Machinists, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The McFarlane-Eggers Machinery Company, Denver, Colorado, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer L. Hunt, Trial Examiner. Said hearing was held at Denver, Colorado, on July 19, 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

The McFarlane-Eggers Machinery Company is a Colorado corporation with its principal place of business in Denver, Colorado. It is engaged in the construction of industrial machinery such as hoists and pumps. During 1943, it had a gross income in excess of \$219,000. Fifty percent of its finished materials is shipped to points outside the State of Colorado.

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

II. THE ORGANIZATION INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, 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 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.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 Union contends that the appropriate unit should comprise all machinists, including machinists helpers and apprentices, machinists welders, and production workers employed at the main plant of the Company, but excluding supervisors. The Company contends that no unit would be appropriate which did not include the production workers and machinists employed at the plant located in the Goodyear Building.

The record shows that the Goodyear plant is housed in a separate building located about 100 feet from the main plant. The work therein is confined exclusively to the construction of Wilfley pumps. The Goodyear building is rented by A. R. Wilfley and Sons Inc. from the owner, who is not the Company. All the machinery is owned by Wilfley and the incidental expenses of light and gas are paid for by Wilfley. Although the Company hires the employees in the Goodyear plant and bills Wilfley for the work done therein on a cost plus basis, Wilfley makes recommendations to the Company concerning the increase and decrease in the number of employees in the Goodyear plant. The plant housed in the main building is a job or contract shop. While occasionally there is some work done on the Wilfley

¹ The Field Examiner reported that the Union submitted 13 authorization cards; that the names of 11 persons appearing on the cards were listed on the Company's pay roll of April 1, 1944, which contained the names of 21 employees in the appropriate unit; and that the cards were all dated August and September 1943

pumps in the main plant, this is due to the inadequate facilities and lack of space in the Goodyear plant. In the main, the work performed in the main plant is the repair and construction of various types of industrial machinery which operations are entirely independent of the operations in the Goodyear plant. Each plant has its own supervisors. More experienced and highly paid workers are employed in the main plant and there is little or no interchange of employees between the two plants. Under the foregoing circumstances, we are of the opinion that the employees in the main plant constitute a separate appropriate unit.

We find that all machinists, including machinists helpers and apprentices, machinists welders, and production workers employed by the Company at its main plant, but excluding all 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The McFarlane-Eggers Machinery Company, Denver, Colorado, 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 Seventeenth 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 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 International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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