

In the Matter of THE HAMILTON TOOL COMPANY *and* INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., AMALGAMATED LOCAL 176

Case No. 9-R-1510.—Decided September 14, 1944

Messrs. Fred W. Schlichter and Ray C. Kelly, of Hamilton, Ohio, for the Companies.

Mr. Bernard Wilberding, of Hamilton, Ohio, for the UAW.

Mr. Charles D. Madigan, of Cleveland, Ohio, for the A. F. of L.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., Amalgamated Local 176, herein called the UAW, alleging that a question affecting commerce had arisen concerning the representation of employees of The Hamilton Tool Company, Hamilton, Ohio, herein called Hamilton Tool,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Hamilton, Ohio, on August 3, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of Pattern Makers League of North America, A. F. of L., herein called the A. F. of L., to intervene. All parties² 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.

¹ This proceeding also concerns the employees of Hamilton Gages, Inc., herein called Hamilton Gages. Hamilton Tool and Hamilton Gages are hereinafter collectively referred to as the Companies.

² Although served with Notice of Hearing, the International Association of Machinists, A. F. of L., did not enter an appearance at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Hamilton Tool Company, an Ohio corporation, located at Hamilton, Ohio, is engaged in the manufacture of machine tools. Its purchases of raw materials, consisting principally of steel, iron, and non-ferrous metals, are annually in excess of \$100,000, approximately 90 percent of which is shipped to it from sources outside the State of Ohio. Its annual sales of finished products are in excess of \$300,000, approximately 75 percent of which is shipped from its plant to points outside the State of Ohio.

Hamilton Gages, Inc., is engaged in the manufacture of special gages for the armed forces. During the past year it received materials in excess of \$20,000, from sources outside the State of Ohio. During the same period it shipped approximately 75 percent of its finished products to points outside the State of Ohio.

Each of the Companies concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of Automobile, Aircraft, and Agricultural Implement Workers of America, Amalgamated Local 176, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Pattern Makers League of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.³

III. THE QUESTION CONCERNING REPRESENTATION

Hamilton Tool has refused to grant recognition to the UAW as the exclusive bargaining representative of its employees until the UAW 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 UAW represents a substantial number of employees in the unit hereinafter found appropriate.⁴

³ At the inception of the hearing, Hamilton Tool and the UAW agreed to exclude pattern makers and pattern maker apprentices. The A. F. of L. thereafter withdrew and took no further part in the proceedings.

⁴ In support of its claim to represent the employees of Hamilton Tool, the UAW submitted 100 paid-up membership cards, all of which bore apparently genuine original signatures of employees in the employ of Hamilton Tool. All of the cards bore dates since June 1, 1944. There are 126 employees in the unit herein found appropriate.

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The UAW requests a unit composed of all production and maintenance employees of Hamilton Tool, including leadmen, inspectors, and plant clerks, but excluding supervisors, guards, pattern makers and apprentices, office clerical and engineering department employees. The Companies agree generally that the specific composition of this unit is appropriate, but contend that the employees of both Hamilton Tool and Hamilton Gages constitute a single unit; they would also exclude leadmen and plant clerical employees. The UAW seeks exclusion of the employees of Hamilton Gages because they are the employees of a separate corporation.

Hamilton Gages was organized in 1942 for the purpose of carrying out a contract with Army Ordnance. It conducts its operations in a separate room in the basement of a plant occupied by both companies, where it employs approximately 17 production workers and a foreman. Although it engages exclusively in the manufacture of gages, the work performed is similar in character and requires similar skill to the work performed by employees of Hamilton Tool. Moreover, both companies possess common stock ownership, utilize the services of the same persons as officials, engage the same personnel director, and employ the facilities of the same office clerical staff. In addition, the record discloses that when Hamilton Gages was organized the supervisors and a majority of its employees were recruited from Hamilton Tool personnel with the understanding that such employees would be on-leave of absence and would retain their seniority and other rights as if they had remained at work for Hamilton Tool. Although the employees of Hamilton Gages are carried on a separate pay roll for administrative purposes, the employees of both Companies equally enjoy employer-sponsored activities, share plant facilities that are used in common by all employees, and are employed under comparable working conditions. The Companies, also, often utilize each other's production facilities, although they remunerate each other for such use. In view of all the circumstances herein disclosed, we are of the opinion that the employees of the Companies together constitute an appropriate unit.

Plant clerks: Hamilton Tool contends that two stores clerks and one production clerk be excluded because of the confidential nature of their work. The record discloses that these employees are in charge of stores in their respective departments, maintain records in con-

nection therewith, and are closely associated with the activities of production workers. Although these plant clerks have access to cost records, the record does not disclose that they possess any advance information relating to matters associated with labor relations; we shall therefore include them.

Leadmen: The UAW would include all persons classified as leadmen, on the ground that they do not exercise supervisory authority. Although a large part of the time of these employees is devoted to manual labor, the record discloses that leadmen direct the work of from 1 to 10 employees, receive a higher rate of pay than regular employees, attend conferences arranged for the supervisory staff, and make effective recommendations regarding changes in the status of employees working under them. We find that leadmen fall within our usual definition of supervisory employees; we shall exclude them.

Herbert Dennis: Hamilton Tool maintains that Herbert Dennis occupies the position of chief inspector and therefore should be excluded. Between March 20 and April 11, 1944, at which time he had no employees under his supervision, Dennis attended a series of supervisory conferences held for the purpose of discussing the responsibilities of foremen; his name was listed as chief inspector in the conference minutes, copies of which were thereafter distributed to the participants. The president of Hamilton Tool testified that he had been requested to attend these conferences because his position in the plant was regarded as comparable to that of other supervisory employees in that he had access to confidential cost and engineering data. The only other inspector in the plant worked in a different department and performed work dissimilar in character to that performed by Dennis. On or about July 24, 1944, approximately 10 days prior to the hearing, this inspector and another, newly engaged, were both placed in Dennis' department under his supervision. On August 1, 1944, Dennis received a notice, which was also circulated among the supervisory personnel, advising him that he was charged with the responsibility for all inspection work in the Hamilton Tool, that all inspection personnel would be under his direct supervision, and that he would be responsible only to the plant superintendent or the president.

Although the UAW would exclude the job classification of "chief inspector," it maintains that Dennis had never been officially apprised of the fact that he holds such position. It also refers to the fact that the notice vesting Dennis with additional supervisory responsibilities had been received but 2 days before the hearing and 2 months after he had become active in organizing the employees of Hamilton Tool. Dennis testified that the inspector, recently engaged, worked with him as a helper, that the inspector who had been transferred from the other

department had not been placed under his jurisdiction until August 1, and that he had no greater access to engineering data than other employees in the plant, and denied that he inspected cost records. He further denied that he had ever exercised supervisory functions, asserting that his work remained the same as that of the other inspectors. However, as indicated above, Dennis attended supervisory conferences prior to the assignment of inspectors under his supervision, and at no time repudiated the supervisory authority with which he was expressly vested on August 1, 1944. We are of the opinion that Dennis is a supervisory employee, and, as such, we shall exclude him from the unit.

We find that all production and maintenance employees of the Companies, including plant clerks⁵ and employees of Hamilton Gages, but excluding office clerical and engineering department employees, pattern makers, guards, leadmen, and all supervisors having authority to hire, discharge, promote, discipline, 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.⁶

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 Hamilton Tool Company, Hamilton, Ohio, and Hamilton Gages, Inc., Hamilton, Ohio, 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 Ninth

⁵ Included in this category is a time-checker, whom the parties agreed to include in the unit.

⁶ The parties agreed, and we find, that the fireman who on occasion acts as a watchman at night but is neither armed nor uniformed, and George Morscher, who was inadvertently listed on the pay roll as a leadman, are included within the above-described unit, and that James Berry, who acts in the capacity of assistant foreman, is excluded therefrom.

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 The International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C. I. O., Amalgamated Local Union 176,⁷ for the purposes of collective bargaining.

⁷ The UAW's request to appear on the ballot as designated above is hereby granted.