

In the Matter of ART METAL CONSTRUCTION CO. and OFFICE EMPLOYEES UNION No. 23672 (AFL)

Case No. 3-R-835.—Decided October 16, 1944

*Mr. Olive L. Wright*, of Jamestown, N. Y., for the Company.

*Mr. Robert A. Warner*, of Erie, Pa., for the Office Employees.

*Mr. Harry I. Smith*, of Buffalo, N. Y., and *Mr. George R. Nelson*, of Jamestown, N. Y., for the I. A. M.

*Mr. Edwin R. Benson*, of Jamestown, N. Y., for the Technicians.

*Miss Frances Lopinsky*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Office Employees Union No. 23672 (AFL), herein called the Office Employees, alleging that a question affecting commerce had arisen concerning the representation of employees of Art Metal Construction Co., Jamestown, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Jamestown, New York, on August 15, 1944. The Company, the Office Employees, International Association of Machinists, herein called the IAM, and International Federation of Technical Engineers, Architects and Draftsmen Union, A. F. of L., herein called the Technicians, appeared and participated.<sup>1</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company moved for the dismissal of the petition on the ground that the Office Employees did not submit authorization cards for a majority of its employees. For reasons herein-

<sup>1</sup> The IAM has been recognized by the Company as the bargaining representative of the production and maintenance employees of the Company. It is likewise the bargaining representative for a separate unit of employees of the sales service division and a separate unit of stock mill handlers and inspectors. The Technicians is the bargaining representative for the draftsmen, tool designers, and other technical employees of the Company (see *Matter of Art Metal Construction Company*, 40 N. L. R. B. 842). These unions appeared as interested parties; not as intervenors.

after appearing, we hereby deny said motion. 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

Art Metal Construction Co., a Massachusetts corporation, operates three plants in Jamestown, New York, where it is engaged in the manufacture of aluminum and metal parts for airplanes and ships. During the year 1943, it used at its Jamestown plants raw materials of a value in excess of \$3,033,014, more than 64.3 percent of which represents shipments made to the Company's Jamestown plants from points outside the State of New York. During the same period, the Company manufactured, at its Jamestown plants, finished products of a value in excess of \$9,681,150, more than 70 percent of which represents shipments to points outside the State of New York. For the purpose of this proceeding, the Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

Office Employees Union No. 23672, 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 Office Employees as the exclusive bargaining representative of its office clerical employees until the Office Employees 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 Office Employees represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

<sup>2</sup> The Field Examiner reported that the Office Employees submitted 34 application-for-membership cards, 32 of which bore names of persons within the appropriate unit; that there were 77 employees in the appropriate unit; and that the cards were dated in April, June, and July 1944. The Company moved dismissal of the petition on the ground that this report indicates that the Office Employees did not submit authorizations of a majority of the employees in the appropriate unit. Since a substantial showing of representation is sufficient to satisfy us that a question concerning representation has arisen, the motion is denied. See *Matter of Smith & Caffrey Co.*, 38 N. L. R. B. 90; *Matter of Elite Laundry Co. of Washington, D. C.*, 53 N. L. R. B. 1212.

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 Office Employees, in its petition, describes the unit which it requests as "all office and clerical employees, including such workers in the post index division, except for supervisory employees who have the power to hire and discharge." The Company agrees that the defined unit is appropriate in scope, and further agrees with the Office Employees that plant clericals shall not be included therein, but would exclude therefrom certain private secretaries and pay-roll clerks who, it contends, are confidential employees.

The pay-roll clerks are employed in the various departments within the agreed unit. One group of them calculates the pay roll, another fills the pay envelopes. Although the pay-roll information to which these clerks have access is confidential in the sense that both the Company and the individual employees might well prefer that it not be made public, it is not the type of confidential information which warrants depriving the possessors thereof of representation by a bargaining representative.<sup>3</sup>

Of the pay-roll clerks, there is one, Genevieve O'Brien, who, because of long seniority and capability, has been put in charge of the routine operations involved in making up the pay roll. She works along with the girls to whom she assigns work. Although she reports to the head of the department on the speed and skill of other girls in her department, she has no authority to make changes in the status of their employment. We find, that O'Brien is not a supervisory employee within our usual definition of the term and we shall, therefore, include her as well as other pay-roll clerks within the unit.

The parties agreed to the exclusion of the secretaries to the vice president in charge of sales, the secretary-treasurer, the president of the Company, and the vice president in charge of post-index sales. The Company contends that the secretaries discussed below should also be excluded.

The secretaries to the vice presidents in charge of contract sales, and in charge of agency sales have a status similar to that of the secretaries to the vice presidents in charge of sales and post-index sales, whom the parties agreed to exclude. We assume that all of these executives would be consulted on important matters dealing with labor relations and personnel and that their private secretaries

<sup>3</sup> See *Matter of Texas Company*, 54 N. L. R. B. 727.

would be given dictation with respect thereto.<sup>4</sup> We shall, therefore, exclude the secretaries to the vice presidents from the unit.

The secretary to the chief engineer of the Company also receives dictation and has access to information with respect to labor relations matters by reason of the fact that the chief engineer is the Company's bargaining representative in all bargaining negotiations between the Company and the Technicians. We shall, therefore, exclude her from the unit.

The secretary to the manager of agency sales for the post-index division, likewise has access to labor relations information because the executive for whom she works handles employment information relative to all field personnel. We shall, therefore, exclude her from the unit.

The secretary to the export manager of the Company, and the secretary to the assistant manager in charge of sales in the post-index division handle information which is of a confidential nature, but which has no relationship to labor relations. We shall, therefore, include these secretaries in the unit.<sup>5</sup>

We find that all office and clerical employees of the Company, including pay-roll clerks (including Genevieve O'Brien), and including such workers in the post-index division, but excluding the private secretaries of the president, the vice presidents, the secretary-treasurer, the chief engineer and the manager of agency sales for the post-index division of the Company and 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 Rela-

<sup>4</sup> See *Matter of General Cable Corporation*, 55 N. L. R. B. 1143. It is not intended that Vivian Fox, who occasionally substitutes as a private secretary to one of the vice-presidents should be excluded from the unit.

<sup>5</sup> See *Matter of United States Smelting, Refining & Mining Co.*, 53 N. L. R. B. 84.

tions 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 Art Metal Construction Co., Jamestown, 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 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 Office Employees Union No. 23672, American Federation of Labor, for the purposes of collective bargaining.

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