

In the Matter of KANE & ROACH, INC. and LOCAL #381, INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. L.

Case No. 3-R-871.—Decided October 31, 1944

Fraser Brothers, by *Mr. Henry S. Fraser*, of Syracuse, N. Y., for the Company.

Mr. Harry I. Smith, of Buffalo, N. Y., and *Mr. Clark H. Goodrich*, of Seneca Falls, N. Y., for the Union.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local #381, 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 Kane & Roach, Inc.,¹ Syracuse, 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 Syracuse, New York, on October 3, 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. At the close of the hearing, the Company moved to dismiss the petition. The Trial Examiner referred the motion to the Board for determination. For reasons hereinafter appearing, the motion is denied. 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

Kane & Roach, Inc., is a New York corporation engaged in the manufacture of straightening, forming, and bending machines at its

¹ Name as amended at the hearing.

plant in Syracuse, New York. During 1943, the Company used at its said plant raw materials valued in excess of \$100,000, of which more than 10 percent represents shipments from points outside the State of New York. During the same period, its products finished at its said plant, excluded \$300,000 in value, of which more than 50 percent was shipped to points outside that State.

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

II. THE ORGANIZATION INVOLVED

Local #381, 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 parties stipulated that, on or about August 20, 1944, the Union notified the Company that it represented a majority of the Company's production and maintenance employees and requested recognition as their exclusive bargaining representative, and that the Company refused to recognize the Union until it has been certified by the Board in an appropriate unit.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

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

Both parties are in agreement that the appropriate unit should comprise all the Company's production and maintenance employees, excluding dispatchers, nurses, timekeepers, pattern makers, draftsmen, engineering department employees, clerical employees,³ supervisors,

² The Field Examiner reported that the Union submitted 54 application cards, and that the alleged appropriate unit contained approximately 70 employees.

The Company moves for dismissal of the petition on the ground that no competent proof was presented establishing that the Union was designated by the Company's employees as their representative. It argues that the Field Examiner's report, which was received in evidence over its objection, is merely hearsay and not the best evidence, and that the Company was deprived of its right to cross-examine the Field Examiner and inspect the application cards in violation of the Fifth Amendment to the Constitution. These are the same arguments advanced by the Company's counsel in behalf of the employer in *Matter of Seneca Falls Machine Company*, 58 N. L. R. B. 1413, which we found to be without merit. For the reasons contained in *Matter of Seneca Falls Machine Company*, we likewise reject the Company's contentions in the instant proceeding.

³ The parties define clerical employees as those employees whose work is essentially clerical whether performed in the office or factory.

foremen, the chief inspector, and all other supervisory personnel. However, they are in dispute with respect to the inspector, whom the Union would include and the Company would exclude.

At the present time, the Company employs one inspector whose inspection bench is in a specified section of the plant. Essentially, it is his duty to check against blueprints products completed or in the process of manufacture in the grinding and lathe departments. Concededly, he has no power to reject work, although his recommendations are accorded weight by his superiors. If, in his opinion, a product does not conform to blueprint specifications, the inspector reports it to the foreman of the department where the work was done. Should the foreman disagree with him and apparently refuse to have the purported error corrected, the inspector may discuss the matter with the general foreman. The inspector works the same hours as other employees in the factory and, like them, receives an hourly rate of pay which, on the average, may be slightly higher than that received by such other employees. In view of the facts that the inspector's function is an integral part of the production process, and he does not possess any indicia of authority which would bring him within our customary definition of supervisory employees, we shall include him.⁴

It appears that, in connection with a pending reorganization, the Company intends by next month to employ a chief inspector and two assistant inspectors. The parties stipulated to the exclusion of the chief inspector as supervisory, but are in dispute with respect to the assistant inspectors, whose duties, according to the record, will substantially correspond to those of the present inspector. Accordingly, we shall include the assistant inspectors.

We find that all the Company's production and maintenance employees, including the inspector and assistant inspectors, but excluding dispatchers, nurses, timekeepers, pattern makers, draftsmen, engineering department employees, clerical employees, supervisors, foremen, the chief inspector, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employes, 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

⁴ *Matter of Westinghouse Electric & Manufacturing Company*, 45 N. L. R. B. 826.

period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company requests that its employees now on military leave be permitted to vote by mail. For the reasons stated in the *Mine Safety Appliance Co.* case,⁵ we shall direct that only persons in the armed forces who present themselves at the polls may vote in the election.

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 Kane & Roach, Inc., Syracuse, 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 Local #381, International Association of Machinists, American Federation of Labor,⁶ for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

⁵ *Matter of Mine Safety Appliance Co., Callery Plant, Callery, Pa*, 55 N L R B 1190; See also *Matter of Seneca Falls Machine Company*, 58 N L R B 1413

⁶ Petitioner requests that its name be designated on the ballot as it appears in the Direction of Election.