

In the Matter of UNDERWOOD MACHINERY COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (C. I. O.)

Case No. 1-R-2044.—Decided November 3, 1944

Mr. Benjamin E. Gordon, of Boston, Mass., for the Company.
Messrs. John J. O'Connell and Alfred A. Albert, of Boston, Mass., for the Union.
Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Underwood Machinery Company, Boston, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John W. Coddair, Trial Examiner. Said hearing was held at Boston, Massachusetts, on September 20, 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 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

Underwood Machinery Company, a Massachusetts corporation, incorporated in 1923, is engaged in its plant at 110 Mt. Vernon Street, in the South Boston District of Boston, Massachusetts, in the manufacture of specially constructed machinery of all types, and in the

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fabrication of steel. In its operations the Company uses as raw materials, steel and fabricated or machine parts.

During the calendar year 1943 the Company used raw materials valued in excess of \$60,000, approximately 40 percent of which was shipped to the Company from points outside the Commonwealth of Massachusetts. During the same period the sales of the Company were in excess of \$200,000, approximately 5 percent of which resulted from the sale of products shipped by the Company to points outside the Commonwealth of Massachusetts. Approximately 92 percent of the Company's work at the present time consists in fulfilling direct or subcontracts for the United States Government, the other 8 percent of the Company's work is priority-work.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On August 11, 1944, the Union wrote the Company requesting recognition as exclusive bargaining representative of the Company's employees. Conferences were held, but since the Company questioned the Union's majority status in the appropriate unit, it refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union is certified by the Board.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of the employees which it seeks to represent in this proceeding.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 DETERMINATION OF REPRESENTATIVES

The Union seeks a unit comprised of all production and maintenance employees of the Company, including shipping employees, but excluding engineering department employees, office clerical employees,

¹The Field Examiner reported that the Union submitted 60 membership cards; that the names of 47 persons appearing on the cards were listed on the Company's pay roll of September 6, 1944, which contained the names of 71 employees in the alleged appropriate unit; and that 35 of the cards were dated August 1944, and 25 cards were undated.

executives, supervisors and guards. The Company contends that the engineering department employees should be included, and that the employees in the erection and maintenance department and the toboggan hoist department should be excluded from the appropriate unit.

The engineering department consists of mechanical engineers, draftsmen and helpers. The engineers are specially qualified for their positions, are college graduates and work on a salary basis, at a much higher rate than the other production and maintenance employees. The draftsmen are also technically trained for their positions and work under the same conditions as the engineers. The department is located in a separate room adjacent to the offices. The engineering department prepares plans and drawings, including shop plans and assemblies, and prepares specifications for the work to be done in the various departments of the plant. On the basis of these facts we shall exclude the employees in the engineering department as technical employees.

The toboggan hoist department, which the Company seeks to exclude from the appropriate unit, was organized in March 1944 to manufacture a secret product for the Government under contract. Workers in the department, except for the supervisory employees who were taken from other departments of the Company, were hired directly for the work. The majority of these employees are skilled or semi-skilled workers. The Company states that the contract, under which this department is operating, will terminate in November 1944, and there is a possibility that it may not be renewed or extended. If the contract does terminate in November 1944 the majority of the employees may be dismissed, while a few workers may be transferred to other departments in the plant. The Company urges that, because the contract may soon terminate, the employees in the toboggan hoist department should not be included in the appropriate unit. Inasmuch as employees in this department are production workers, we see no reason to exclude them from the unit. Mere insecurity of tenure is not a reason for excluding from a bargaining unit employees whose interests and functions are otherwise similar to those of the other employees comprising the unit.² We shall, therefore, include the employees of the toboggan hoist department, with the exception of the supervisors.

The Company desires the exclusion of the employees in the erection and maintenance department. This department is composed of a crew of millwrights, electricians, carpenters and machinists, numbering altogether 11 men, including a foreman and assistant foreman. The erection and maintenance department is responsible for the

² See *Matter of M P Moller, Inc.*, 56 N. L. R. B. 16; *Matter of Tri-State Garment Corp.*, 51 N. L. R. B. 1337; *Matter of Natl Rose Spring and Mattress Co.*, 58 N. L. R. B. 1180; *Matter of E W. Bliss Rolling Mill*, 58 N. L. R. B. 1171.

installation, on the customers' premises, of machines which have been manufactured by the Company according to customer specification. These jobs take the crew away from the plant for varying periods of time, and sometimes involve out-of-town trips. Occasionally men from other departments of the plant go with the crew from the erection and maintenance department to assist in the erection and installation of the machinery, and sometimes additional men are hired to supplement the crew. A 20 percent bonus is paid by the Company for all outside work done. Whenever the employees of the erection and maintenance department are not engaged on an outside job they are employed by the Company in the maintenance of its premises, repairing machinery, etc. The men in this department are the only maintenance workers employed by the Company. The foreman of the erection and maintenance department is in complete charge of the maintenance work done in the plant, and the assistant foreman spends about 90 percent of his time in the plant, on maintenance work.

The Company urges the exclusion of the employees in the erection and maintenance department on the ground that their inclusion in the plant unit would create serious sources of conflict between the Company and other employers or unions in situations where the erection and maintenance crew is required to work in plants, the employees of which are represented by other unions. This contention which necessarily implies that the employees in question, because of their outside assignments, should not, under any circumstances, be permitted to have a collective bargaining representative, is without merit. The possibility of boycott is not, *per se*, a valid reason either for denying employees the right to representation under the Act, nor for excluding them from bargaining units in which they are otherwise appropriately included.³ The Company also asserts that there is very little community of interest between employees in this department and those who work inside the plant, *inter alia*, because the occupations of the men comprising the group are those of independent craftsmen. While it is true that the occupations of the men comprising the erection and maintenance department are apparently those of craftsmen, there is no other union endeavoring to represent them at the present time, and the record indicates that their skills are not dissimilar to those of other employees in the plant. Neither party contends that, as craftsmen, they should be in a separate unit or units. Employees in this department, as inside maintenance workers, have an obvious community of interest with the other employees in the plant. Even in their outside work they are sometimes accompanied by other employees from the various departments of the plant, and the erection and

³ See *Matter of Gluek Brewing Co.*, 47 N. L. R. B. 1079; *N. L. R. B. v. Star Publishing Co.*, 97 F. (2d) 465 (C C A. 9).

installation function seems to be an integral part of the production of the Company's custom-made items.

Under the circumstances herein presented we find that the employees in the erection and maintenance department, excluding the foreman and assistant foreman, can properly function as a part of a unit comprising all production and maintenance workers. However, in view of the difference between the working conditions of these employees and those of the other workers in the plant, we are of the opinion that the employees in the erection and maintenance department should be given an opportunity to express their choice as to whether or not they desire to be included in the plant-wide production and maintenance unit, and we will therefore provide that they may vote separately in the elections hereinafter directed.

We shall direct that separate elections be held among :

- (1) the employees in the erection and maintenance department, excluding the foreman and assistant foreman; and
- (2) all other production and maintenance employees, including the employees in the toboggan hoist department and shipping employees, but excluding the engineering department employees, subforemen, assistant foremen,⁴ foremen, office clerical employees, guards, and all other supervisory employees with authority to hire, promote, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

We will await the results of these elections before determining the appropriate unit. If the Union secures a majority of votes cast by the employees in voting group (2), alone, we shall find that that group, excluding the employees in the erection and maintenance department, constitutes the appropriate unit. If, in addition, a majority of the employees in voting group (1) select the Union as their representative, we shall include them in the aforesaid unit. We make no determination at this time as to any unit finding in the event that the election results are other than those specified above.

We shall direct that the question concerning representation which has arisen shall be resolved in part, by means of separate elections by secret ballot among the employees in the voting groups set forth above, who were employed during the pay-roll period immediately preceding the date of the Direction, subject to the limitations and additions set forth therein.

⁴ At the hearing some question arose as to whether or not certain subforemen and assistant foremen were supervisory employees. However, the record shows, and the parties agreed, that the duties of the subforemen and assistant foremen are such that they are supervisory employees within the scope of our usual definition.

DIRECTION OF ELECTIONS

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 Underwood Machinery Company, Boston, Massachusetts, separate elections 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 First 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 each of the voting groups set forth below 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 International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (C. I. O.), for the purposes of collective bargaining:

(1) the employees in the erection and maintenance department, excluding the foreman and assistant foreman;

(2) all other production and maintenance employees, including employees in the toboggan hoist department and all shipping employees, but excluding the engineering department employees, executives, supervisors, foremen, assistant foremen, and subforemen, office clerical employees, guards, 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.