

In the Matter of MORROW MANUFACTURING COMPANY, DIVISION OF THE WACKER CORPORATION<sup>1</sup> and UNITED CONSTRUCTION WORKERS OF U. M. W. A.

*Case No. 9-R-1514.—Decided November 6, 1944*

*Mr. Frank C. Morrow*, of Wellston, Ohio, for the Company.

*Mr. Stanley Denlinger*, of Akron, Ohio, and *Mr. Carl Schmidt*, of Columbus, Ohio, for the UMWA.

*Mr. Phillip M. Curran*, of Pittsburgh, Pa., and *Messrs. Ward Walcott* and *Ernest Mitchell*, of Columbus, Ohio, for the C. I. O.

*Miss Ruth Rusch*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by United Construction Workers of U. M. W. A., herein called the UMWA, alleging that a question affecting commerce had arisen concerning the representation of employees of Morrow Manufacturing Company, Division of The Wacker Corporation, Wellston, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner. Said hearing was held at Jackson, Ohio, on September 26, 1944. The Company, the UMWA, and the United Steelworkers of America, CIO, herein called the CIO, appeared and participated.<sup>2</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 Trial Examiner reserved ruling on the CIO's motion to dismiss the petition for the Board's determination. At the hearing, the CIO moved to dismiss the UMWA's petition on the grounds that the petition is untimely and the contract between the CIO and the Company is a bar. For reasons stated in Section III, *infra*, the motion is hereby denied.

<sup>1</sup> All parties agreed that the name of the Company be amended to read as set forth above.

<sup>2</sup> At the beginning of the hearing, the Trial Examiner granted a motion to intervene by the CIO.

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 Morrow Manufacturing Company, a division of The Wacker Corporation, which is an Illinois corporation, is located at Wellston, Ohio, where it is engaged in the manufacture and construction of cranes, barges, and hoisting machinery for the United States Army and Maritime Commission. The principal raw material which the Company uses is fabricated steel, the majority of which is purchased from steel mills outside the State of Ohio. All of the Company's sales are made to the United States Army and Maritime Commission and amount to more than \$1,000,000 in value annually.

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

#### II. THE ORGANIZATIONS INVOLVED

United Construction Workers is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

United Steelworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On July 7, 1944, the UMWA notified the Company that it represented a majority of the Company's production and maintenance employees. The Company has refused to recognize the UMWA as the exclusive bargaining representative claiming a contract with the CIO as a bar.

The CIO has been the exclusive bargaining representative of the Company's employees since 1937. The last contract, which both parties maintain is still in effect, became operative in January 1, 1943, to continue in effect until December 31, 1943, "and thereafter until a new agreement has been signed." The parties have conferred about negotiating a new contract several times; but no new agreement has been reached. Meanwhile, they have continued to operate under the terms of the 1943 contract. At the last meeting, which was held sometime in March, the parties were in substantial accord except with

respect to wage rates. Shortly thereafter, the CIO filed its proposed wage rates with the National War Labor Board. It is contended that the case which is now before the War Labor Board constitutes a bar to the present proceeding. Inasmuch as the Company and the CIO have enjoyed collective bargaining relations since 1937 this contention is without merit.<sup>3</sup> We also find that the 1943 contract, which is now one of indefinite duration, is not a bar to this proceeding and we, therefore, deny the CIO's motion to dismiss the petition.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the UMWA represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

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 parties agreed that the appropriate unit should be composed of production and maintenance employees, excluding supervisory and clerical employees.<sup>5</sup> Under the collective bargaining contract between the Company and the CIO, hourly paid foremen, group leaders, and the timekeeper were included in the unit. The UMWA would include the group leaders but exclude all the foremen and the timekeeper. The Company and the CIO would adhere to the contract unit and include the timekeeper and foremen.

Under the works manager and superintendent there are 5 general foremen in the plant, all salaried employees, each of whom is in charge of a production department, and under them are approximate 4 foremen and 15 group leaders.<sup>6</sup> The Company considers those employees called foremen and those called group leaders as being on the same level in the supervisory hierarchy and describes them all as subforemen. It contends that none of them exercises substantial supervisory authority. Group leaders in most instances are not sub-

<sup>3</sup> *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268.

<sup>4</sup> The Field Examiner reported that the UMWA submitted 169 cards, 149 of which bore the names of persons listed on the Company's pay roll of August 24, 1944, which contained the names of 220 employees in the appropriate unit. The cards were dated between June 1, 1944, and August 30, 1944.

The CIO did not submit any evidence of membership, but relies on its contract as proof of its interest. At present, the Company is checking off dues for all the employees with the exception of three or four.

<sup>5</sup> At the hearing, all the parties agreed that the works manager, the superintendent, the five general foremen, and the yard foreman are supervisory employees.

<sup>6</sup> In addition, there are four supervisors of what appear to be maintenance crews or departments, namely: the chief electrician, the carpenter foreman, the machine shop foreman, and the paper department foreman. The record discloses that two of these foremen are not under the supervision of the general foreman but are directly responsible to the plant superintendent. However, all four of these employees are apparently considered as equivalent in authority to the foremen and group leaders discussed above.

ordinate to the foremen although the latter receive a slightly higher hourly wage rate than the group leaders and generally oversee larger crews. All the foremen and group leaders work at least occasionally with the employees whose operations they oversee, some spending more of their time in manual work than others. Neither foremen nor group leaders have authority to hire or discharge employees or otherwise effect changes in their status. They may recommend such action but when a recommendation is made to one of the general foremen he makes an independent investigation before the matter is taken under advisement by the personnel office. Thus, it appears that the difference in job titles does not in this instance reflect any significant difference as to the supervisory authority between the foremen whom the UMWA would exclude from the unit and the group leaders whom it would include. In view of these facts and the prior bargaining history, we find that neither the foremen nor the group leaders are supervisory employees within the meaning of our usual definition. We shall include them in the unit together with the chief electrician, the carpenter foreman, the machine shop foreman, and the paper department foreman, who appear to occupy similar positions, under the designation "hourly paid subforemen."

Although the timekeeper performs purely clerical functions, he spends almost his entire time in the plant and has an office in the shop. There is no evidence indicating to whom he is responsible. In view of the past bargaining history, we shall include the timekeeper in the unit.

We find that all production and maintenance employees including the timekeeper and all hourly paid subforemen, but excluding clerical employees 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 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 Morrow Manufacturing Company, Division of The Wacker Corporation, Wellston, 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 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 they desire to be represented by United Construction Workers of U. M. W. A., or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither.