

In the Matter of THE PROGRESS LITHOGRAPHING COMPANY, READING MACHINE CO. DIVISION and PAPER WORKERS ORGANIZING COMMITTEE, C. I. O.

Case No. 9-R-1556.—Decided November 30, 1944

Peck, Shaffer and Williams, by Mr. John Colville Taylor, of Cincinnati, Ohio, for the Company.

Mr. Logan Goff, of Cincinnati, Ohio, for the Union.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the Paper Workers Organizing Committee, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Progress Lithographing Company, Reading, Ohio, herein referred to as the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on October 13 and 26, 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 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 Progress Lithographing Company, an Ohio corporation, is engaged in the business of lithographing at Reading, Ohio. During the past 12 months its purchases have been in excess of \$100,000, of which approximately 80 percent was secured from sources outside the State

of Ohio. During the same period its total sales aggregated in excess of \$300,000, of which approximately 80 percent was shipped to points outside the State of Ohio.

A portion of the plant owned by Progress is occupied by a machine shop engaged in the manufacture of machine tools. The machine shop was originally established by Charles H. Klein, the president of Progress, in his home, and was later removed to its present location, at which time Progress reimbursed Klein for all expenditures theretofore incurred. About 6 months prior to the hearing, Articles of Incorporation were secured from the State of Ohio in the name of Reading Machine Company for the purpose of conducting the business as a separate corporate enterprise, but no officers have ever been elected, nor has the corporation issued any stock or acquired the assets of the machine shop. Although the record discloses that a bank account is maintained in the name of Reading, which also uses its own letterheads for correspondence and bills its own customers, Progress, through its president, has retained active control in the management of Reading. It maintains an account for Reading in its books, provides it with office and clerical facilities without reimbursement, files a consolidated income tax return, and issues its own checks to pay wages, Social Security, Workmen's Compensation, and Unemployment Insurance for the employees in the machine shop, consisting of three machinists and a foreman who also perform some maintenance work for it. In view of the foregoing we find that Progress is the employer of the employees in the machine shop, within the meaning of Section 2 (2) of the Act.¹

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

II. THE ORGANIZATION INVOLVED

Paper Workers Organizing Committee, affiliated with the Congress of Industrial Organizations, 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 Union as the exclusive bargaining representative of its machine shop employees until the Union has been certified by the Board.

The Company and the Union have entered into successive collective bargaining agreements, the last of which was executed on September 23, 1944. The current agreement provides that coverage shall consist of "all production workers, including working foremen and

¹ We do not hereby imply that Reading Machine Company is not also the employer of the employees involved herein.

janitors, of the cutting, sorting, shipping, and varnish departments, and no others." The Company contends that, in view of the foregoing provision, the Union precluded itself from acting as the bargaining representative of any other employees in the plant and that the agreement of September 1944 therefore operates as a bar to this proceeding. We are unable to agree that the employees in the machine shop have thus deprived themselves of the right to bargain collectively through a representative designated by them.² We therefore find that the agreement of September 1944 does not constitute a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

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.

We find in substantial accordance with an agreement of the parties that all the machine shop employees of the Company, at Reading, Ohio, excluding the foreman, 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, 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

² See Matter of *International Harvester Company*, 56 N. L. R. B. 502.

³ The Field Examiner reported that the Union submitted three application cards, of which two were dated in May 1944, and that there are three employees in the alleged appropriate unit.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with the Progress Lithographing Company, Reading, 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 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 Paper Workers Organizing Committee, C. I. O., for the purposes of collective bargaining.