

In the Matter of HOWELL ELECTRIC MOTORS COMPANY¹ and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 7-R-1878.—Decided December 20, 1944

Miller, Canfield, Paddock, and Stone, by Mr. George E. Miller, of Detroit, Mich., for the Company.

Maurice Sugar and N. L. Smokler, by Mr. N. L. Smokler, of Detroit, Mich., for the Union.

Miss Ruth Rusch, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Howell Electric Motors Co., Howell, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sylvester J. Phenev, Trial Examiner. Said hearing was held at Howell, Michigan, on November 14, 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 Company is a Michigan corporation engaged in the manufacture of electric motors. Approximately 95 percent of the Company's business is war work. During the 6 months' period ending September 30, 1944, the Company purchased raw materials consisting of

¹ At the hearing, the Trial Examiner on his own motion corrected the name of the Company on all formal papers as set forth above.

steel, copper wire, and castings amounting to more than \$650,000 in value, of which 50 percent came from sources outside the State of Michigan. For the same period, the Company sold products amounting to more than \$1,700,000 in value, of which 10 percent was shipped to points outside the State of Michigan.

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 and Agricultural Implement Workers 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 September 21, 1944, the Union notified the Company that it represented a majority of the Company's employees and requested recognition. The Company refused to bargain with the Union since the Union's majority status was in doubt.

When a union representative visited the Company, he suggested that an election be held under the auspices of the State Labor Mediation Board. The Company consented and such an election was held on October 6, 1944.

It was agreed between the parties that all production and maintenance employees, excluding office, clerical, and supervisory employees should participate in the election. However, a short time prior to the election, the Union discovered that the Company employed eight home workers whom the Union believed should not participate in the election since they were not subject to the same working conditions. The Company contended that the home workers were production workers and should, therefore, be permitted to vote.

The results of the election were 133 votes for the Union, 131 votes against it, and the 8 votes of the home workers challenged. At the meeting between the parties and the State Labor Mediation Board, the Company argued that the home workers were employees while the Union maintained that they were independent contractors. The State Labor Mediation Board was unable to render a decision and suggested that the present petition be filed.

A statement of a 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

² The Field Examiner reported that the Union submitted designation cards, which bore the names of 101 persons listed on the Company's pay roll of September 30, 1944, which contained the names of 297 employees in the appropriate unit. The cards were dated: 45 in August 1944, 34 in September 1944, 3 in October 1944, and 19 undated.

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 are in substantial accord with respect to the unit, with the exception of the home workers. It was stipulated that the unit should be composed of all the Company's production and maintenance employees, except for office and clerical employees, superintendents, foremen, and assistant foremen, regardless of hours spent in production per day.

In 1943, when the Company needed help badly, it engaged winders, who were former employees and experts, to do some work in their homes. At the time of the election, the Company had eight home workers. Since that time, several more have been employed. They are all married women who are unable to leave their home due to their household tasks. The Company supplies each home worker with a table and the necessary tools. The motors are delivered by a company car to the workers who wind the motors whenever they have the time. The home workers wind only the small motors because the larger motors require either a man or a crane to lift them. When the work is completed, they call the Company so that the motors can be picked up. Since the home workers are expert winders, they need little supervision. However, if any difficulties arise, a forelady is sent to the home to solve the difficulty. Otherwise, a supervisor inspects the work in the houses only at irregular intervals. Employees in the plant who wind motors work on a 48-hour per week schedule and are paid on an hourly basis whereas the home workers wind motors whenever they have an opportunity throughout the day, and are paid on a piece-work rate. Although they are paid on a different principle, both groups of workers average about the same rate of pay per motor. The home workers submit time cards, but these are not checked because the Company knows the approximate time it takes to wind a certain type of motor. The Company argues that the home workers should be included in the bargaining unit since the Company, itself, does not differentiate between the plant and home employees. When a former employee applies for work which is to be done at home, she has to undergo a physical examination the same as the plant employees. The Company pays a Social Security tax on these employees. When the plant winders received a wage increase, the home workers did also.

Despite the Company's policy of extending equal benefits to the home workers, so far as possible, their working conditions are entirely dissimilar to those prevailing at the plant. The Union has not attempted to organize the home workers and, as it contends, it would

obviously be difficult for a collective bargaining agent to render any services to them. We are of the opinion that there is insufficient community of interest between the home workers and the plant employees to warrant the inclusion of the home workers in the unit.³ In view of this determination, it is unnecessary to decide whether or not the home workers are independent contractors rather than employees, as the Union contended.

We find, in accordance with the stipulation of the parties and our foregoing determination, that all production and maintenance employees excluding home workers, office and clerical employees, superintendents, foremen, assistant foremen, 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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Howell Electric Motors Co., Howell, Michigan, 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 Seventh 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

³ *Matter of Kaplan Brothers*, 46 N. L. R. B. 1057.

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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), for the purposes of collective bargaining.