

In the Matter of SYLVANIA ELECTRIC PRODUCTS, INC. and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, C. I. O.

*Case No. 9-R-1638.—Decided December 29, 1944*

*Messrs. W. H. Lamb, G. A. Stachelhaus, and Harry Scherr, of Huntington, W. Va., and Gerry Morse, of New York City, for the Company.*

*David Scribner by Mr. Frederick R. Livingston, of New York City, Mr. Leo Turner, of Pittsburgh, Pa., and Miss Irene Berman, of Huntington, W. Va., for the C. I. O.*

*Mr. Phillip Whitehead, of Huntington, W. Va., and Mr. Francis O'Rourke, of Washington, D. C., for the A. F. of L.*

*Mr. Julius Kirle, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Sylvania Electric Products, Inc., Huntington, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Louis S. Penfield, Trial Examiner.<sup>1</sup> Said hearing was held at Huntington, West Virginia, on November 20, 1944. The Company, the C. I. O., and the American Federation of Labor, herein called the A. F. of L., 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's

<sup>1</sup> Prior to the hearing the A. F. of L. requested a continuance of from 15 to 30 days which the Regional Director denied. Thereafter, however, the Regional Director granted a 10 day continuance. The Regional Director, subsequently, denied a second request for a continuance. The ruling is hereby sustained. The A. F. of L.'s claims of bias and prejudice with regard to the denial of its requests for a continuance are without merit. From the record it appears that the A. F. of L. received ample notice of the hearing, and that it was competently and adequately represented at the hearing by counsel.

<sup>2</sup> A representative of the United States Navy was also present.

rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup> 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

Sylvania Electric Products, Inc., a Massachusetts corporation, with its home offices in Salem, Massachusetts, is engaged in the manufacture of incandescent lamps, fluorescent lamps and fixtures, radio tubes, electronic tubes, and related electrical equipment. The greater part of its production at the present time is for the armed services. During the year 1943, the total sales of the Company were valued at in excess of \$60,000,000, all of which were made for the United States Navy. During the same period the Company purchased raw materials valued at in excess of \$1,000,000.

We are concerned here with the Company's plant at Huntington, West Virginia, which started production in the spring of 1944, and is engaged in the manufacture of electronic tubes for the United States Navy. It is estimated that the Company's Huntington, West Virginia, plant will purchase annually raw materials valued at in excess of \$100,000, more than 50 percent of which will come from sources outside the State of West Virginia. It is estimated that the Company's Huntington, West Virginia, plant will manufacture annually finished products valued at in excess of \$100,000 for the United States Navy.

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

#### II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

American Federation of Labor 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 C. I. O. as the exclusive bargaining representative of certain of the Company's em-

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<sup>3</sup> At the hearing the A. F. of L. twice requested a continuance; the Trial Examiner denied these requests. We find no prejudice to the A. F. of L. in the denial of these requests. The Trial Examiner's rulings are hereby sustained. See footnote 1, *supra*.

ployees until the C. I. O. has been certified by the Board in an appropriate unit.<sup>4</sup>

A statement of a Board agent introduced into evidence at the hearing indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</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 are in general agreement that the appropriate unit should comprise all of the Company's production and maintenance employees, including those employees listed in Appendix A, but excluding draftsmen, the engineering department, the technicians associated with the engineering department, office clericals, plant-protection employees, foremen, assistant foremen, supervisors, and all other supervisory employees. The parties disagree, however, as to monitors, the supervisor of welder mechanics, desk clerks, and the chief cooks.

*Monitors.* The Company employs monitors each of whom has charge of from 8 to 60 operators, and reports to a supervisor. They train new operators, relieve and fill in for absent operators, correct mistakes of operators, keep daily production and attendance records, are responsible for the flow of materials, quality of work, and cleanli-

<sup>4</sup> On October 16, 1944, the C. I. O. addressed a letter to the Company requesting recognition, and on the same date filed its petition herein. On October 19, 1944, the Company acknowledged receipt of the C. I. O.'s letter and suggested that a conference be held on October 30, 1944. This conference was later postponed to November 3, 1944, the conference date set by the Board. The Company's present position is that it will not grant recognition to the C. I. O. until the C. I. O. has been certified by the Board in an appropriate unit. While the position of the A. F. of L. is not quite clear, it apparently contends that the question concerning representation has not been properly raised, since the petition was filed prior to a refusal to bargain by the Company. If such is the contention of the A. F. of L., it is without merit. No formal demand upon the Company prior to the filing of the petition is necessary. For a proceeding of this kind it is sufficient that as of the date of the hearing the C. I. O.'s status as a bargaining representative is disputed and that recognition depends upon certification by the Board. See *Matter of The Jeffrey Manufacturing Company*, 58 N. L. R. B. 212.

<sup>5</sup> The Field Examiner reported that the C. I. O. submitted cards representing 90.9 percent of the total number of employees on the Company's pay roll, all of which were dated within the past 3 months; and that no check was made of the individual cards against the pay roll in view of the large number submitted and the recent date thereof. The A. F. of L. submitted cards similarly dated, representing 17.3 percent of the total number of employees; a check against the pay roll disclosed a showing of 14.3 percent. The Company was reluctant to disclose the number of employees within the claimed appropriate unit, due to reasons of military secrecy.

The A. F. of L. objected to the report of the Field Examiner, contending that since the cards submitted by the C. I. O. had not been checked against the Company's pay roll it was tantamount to a showing of no proof of interest. We find the objection of the A. F. of L. to be without merit. As we have frequently stated, authorization or membership cards are required not as proof of the precise number of employees who desire to be represented by a labor organization, or as a basis for determining the appropriate representative, but simply to provide a reasonable safeguard against the indiscriminate institution of representation proceedings by labor organizations which might have little or no membership in the unit claimed to be appropriate. See *Matter of The Meteor Motor Car Company*, 58 N. L. R. B. 97.

ness in their respective departments, maintain discipline, handle complaints and grievances, and make recommendations through their supervisors affecting the status of operators under their direction. The C. I. O. and the Company would exclude them; the A. F. of L. would include them. We are of the opinion that monitors are supervisory employees within the Board's definition thereof; accordingly, we shall exclude them.

*Supervisor of welder mechanics.* This employee, also referred to as working mechanic foreman, supervises from 15 to 20 welder maintenance employees who work in two departments. He trains all new welder maintenance men, helps out individual mechanics with their problems of maintenance, assigns and equalizes the work of each mechanic, maintains discipline, and recommends the transfer or termination of employees under his supervision. Although an hourly paid employee, his rate of pay is approximately 16 percent higher than the highest paid employee under him. The C. I. O. and the Company would exclude him, while the A. F. of L. would include him. We are of the opinion that this employee comes within the Board's customary definition of a supervisory employee. Accordingly, we shall exclude him.

*Desk clerks.* The Company employs desk clerks who work at the foreman's desk, prepare and file pay roll, production, and attendance reports used as a basis for effecting an employee's rate change, and act as secretaries to the foremen. As secretaries to the foremen they handle records and letters pertaining to grievances of employees. The C. I. O. would include them, the A. F. of L. and the Company would exclude them. We are of the opinion that these employees fall within the Board's definition of confidential employees; accordingly, we shall exclude them.

*Chief cooks.* The Company employs two chief cooks in its cafeteria who work in separate shifts, under the supervision of a cafeteria supervisor. They assist the supervisor in planning menus and preparing food, have charge of the entire cafeteria in the absence of the supervisor, including the direction of from 15 to 17 cafeteria workers on each shift, and have authority to recommend transfers and termination. The A. F. of L. would include and the Company exclude these employees; the C. I. O. takes no position. We are of the opinion that the chief cooks come within the Board's definition of supervisory employees; we shall exclude them.

We find that all of the Company's production and maintenance employees, including the employees listed in Appendix A, but excluding draftsmen, the engineering department, technicians associated with the engineering department,<sup>6</sup> office clericals, shipping clerks, desk clerks, chief cooks, plant-protection employees, foremen, assistant

<sup>6</sup> Kenneth Smith falls within this category.

foremen, supervisors, monitors, supervisor of welder mechanics, 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 payroll 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 Sylvania Electric Products, Inc., Huntington, West Virginia, 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 Electrical, Radio & Machine Workers of America, C. I. O., or by American Federation of Labor, for the purposes of collective bargaining, or by neither.<sup>7</sup>

**CHAIRMAN MILLIS** took no part in the consideration of the above Decision and Direction of Election.

<sup>7</sup> The C. I. O. and the A. F. of L. requested that they be designated on the ballot as set forth above. The request is hereby granted.

APPENDIX A <sup>8</sup>*Cafeteria*

## Cafeteria workers (except chief cooks)

*Filament Department*

Operators	Maintenance mechanics, including toolmakers and machinists
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*Grid-Department*

Emergency operators	Operators
Grid mechanics	Supply girls

*Mounting Department*

Emergency operators	Supply girls
Mechanics	Mounters Instructors

*Stem Department*

Emergency operators	Operators
Supply girls	Floor boys

*Finishing Department*

Emergency operators	Operators
Supply girls	Floor boys
Stock handlers <sup>9</sup>	

*Unit Department*

Emergency operators	Operators
Analyzers	Floor boys

*Quality Department*

Inspectors	Testers
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*Production Control Department*

Stock handlers	Material delivery operators
Firing furnace operators	

<sup>8</sup> Emergency operators include utility girls. Operators include shrinkage recorders.

<sup>9</sup> Stock handlers, wherever this term is used, are men on conveyors doing packing, shipping, warehousing, etc.

*Material Inspection Department*

Inspectors  
Recorders

Testers

*Shipping Department*

Outside truck drivers

*Plant-Maintenance Department*

Electricians  
Millwrights  
Pump room attendants  
Janitors  
Painters

Pipefitters  
Firemen  
Laborers  
Matrons  
Carpenters