

In the Matter of ABRASIVE COMPANY and CONGRESS OF INDUSTRIAL
ORGANIZATIONS

Case No. 4-R-1587.—Decided January 5, 1945

Mr. Bernard G. Segal, by *Mr. James J. Leyden*, of Philadelphia, Pa., for the Company.

Mr. George Buckner, of Philadelphia, Pa., for the C. I. O.

Messrs. Angelo Cefalo and William E. Collier, of Philadelphia, Pa., for District 50.

Mr. LeRoy W. Peacock, of Philadelphia, Pa., for the A. F. L.

Miss Virginia A. Miller, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of the Abrasive Company, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on December 6, 1944. At the commencement of the hearing, the Trial Examiner granted motions by District 50, United Mine Workers of America, Local No. 12739, herein called District 50, and American Federation of Labor, herein called A. F. L., to intervene. The Company, the C. I. O., District 50, and the A. F. L. appeared, participated, and 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.

59 N. L. R. B., No. 271.

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 Pennsylvania corporation, having its plant and principal place of business in Philadelphia, Pennsylvania, and is a division of Simonds Saw and Steel Company, a Massachusetts corporation, of Fitchburg, Massachusetts. The Company is engaged in the manufacture of grinding wheels, polishing grain, and abrasive products. During the year 1944, the Company used raw materials consisting principally of Borolon ore, ceramics, abrasives, and chemicals, exceeding \$500,000 in value, 75 percent of which was transported to the Company from points outside the Commonwealth of Pennsylvania. During the same period, 75 percent of the Company's finished products, valued at approximately \$1,000,000, was shipped to points outside the Commonwealth of Pennsylvania. The Company is engaged almost exclusively in production for war purposes.

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

II. THE ORGANIZATIONS INVOLVED

Congress of Industrial Organizations is a labor organization admitting to membership employees of the Company.

District 50, United Mine Workers of America, Local Union 12739, 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 C. I. O., by letter dated November 4, 1944, claimed to represent a majority of the employees in the alleged appropriate unit. At that time and since, the Company has refused to recognize the C. I. O. on the ground that there was in existence up to and including December 13, 1944, a valid contract with District 50. The contract was not urged as a bar.

A statement of a Board agent, introduced into evidence at the hearing, indicates that both the C. I. O. and District 50 represent a substantial number of employees in the unit hereinafter found appro-

appropriate.¹ On evidence introduced at the hearing the Trial Examiner reported that the A. F. L. also represents a substantial number of employees in the unit.

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 agree, and have so stipulated, that all production, maintenance, and inspection employees, but excluding office and clerical workers, dispensary and cafeteria employees, laboratory technicians, the superintendent, foremen, assistant foremen, and supervisors who have authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, constitute an appropriate unit. The parties are in disagreement, however, with reference to the inclusion or exclusion of guards and watchmen, and those laboratory employees classified as grain inspectors and laboratory assistants.

The C. I. O. seeks the exclusion of the guards and watchmen from the proposed unit. The Company also takes the position that these employees should be excluded. The intervenors, District 50, and A. F. L., however, contend that these employees should be included. The record discloses that guards and watchmen, all of whom are listed on the pay roll as guards, were at one time militarized but were demilitarized in 1944. They are, however, uniformed and armed and are deputized by the Philadelphia Police Department. In view of our customary policy of excluding deputized guards who exercise monitorial functions, from units of production and maintenance employees, we shall exclude all guards.²

All unions participating seek the inclusion of grain inspectors and laboratory assistants. The Company contends that these employees should be excluded, on the ground that all employees in the laboratory are confidential employees. The record reveals that there are approximately 25 employees working in the laboratory, a majority of these being either highly skilled technicians³ or clerical workers whom all

¹ The Field Examiner reported that the C. I. O. submitted 340 membership authorization cards, 4 dated October 1944, 326 dated November 1944, and 10 undated, and that there were approximately 485 employees in the unit.

At the hearing, the A. F. L. submitted to the Trial Examiner 68 authorization designation cards, all of which were dated in December 1944.

District 50 relies upon its contract for evidence of its interest.

² *Matter of Continental Can Company*, 55 N. L. R. B. 180; *Matter of Decatur Iron & Steel Co.*, 59 N. L. R. B. 1070; *Matter of Dempster Bros., Inc.*, 58 N. L. R. B. 151; *Matter of Ingalls Shipbuilding Corp.*, 59 N. L. R. B. 924.

³ The parties stipulated at the hearing that by laboratory technicians were meant ceramists, chemists, engineers, assistant ceramists, assistant chemists, and assistant engineers.

parties agree to exclude. The remaining employees are known as laboratory assistants and grain inspectors. These employees are without special technical training and work under conditions and rules similar to those governing production and maintenance employees. The grain inspectors inspect polishing grains and make reports of their inspections, while the laboratory assistants do routine work of cleaning bottles and utensils and other types of related manual labor. They have no supervisory authority, and in some instances these employees have worked alternately in the laboratory and in the production division proper; further, production employees are sometimes brought into the laboratory to do this work. There is no evidence that their duties place them in a confidential relationship to management within the meaning of that term as used by the Board. Although in the bargaining history as evidenced by the 1-year contract between District 50 and the Company, all laboratory employees were specifically excluded, in view of the foregoing, we are of the opinion that these employees should be included in the production and maintenance unit; accordingly, we shall include them.⁴

We find that all production, maintenance, and inspection employees, including grain inspectors, and laboratory assistants, but excluding office and clerical workers, dispensary and cafeteria employees, laboratory technicians, the superintendent, foremen, assistant foremen, guards and watchmen, and supervisors with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees,⁵ 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,

⁴ *Grinnel Corp.*, 56 N. L. R. B. 1766; *Edgewater Steel Company*, 56 N. L. R. B. 1778; *Monarch Aluminum Manufacturing Company*, 53 N. L. R. B. 956; *Pittsburgh Plate Glass Company*, 52 N. L. R. B. 1181.

⁵ At the hearing, a question was raised concerning a group of former employees who had been classified as "supervisors." Since this category has been eliminated, we will not at this time rule with reference to such employees. Should such a category be again established, inclusion or exclusion of such employees would depend on whether or not they exercised supervisory functions within the above definition.

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 the Abrasive Company, Philadelphia, Pennsylvania, 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 Fourth 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 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 they desire to be represented by Congress of Industrial Organizations, or by District 50, United Mine Workers of America, Local Union 12739, or by American Federation of Labor, for the purposes of collective bargaining, or by none.