

In the Matter of JOHNS-MANVILLE PRODUCTS CORPORATION and CONCORD LODGE 1173, AFFILIATED WITH DISTRICT LODGE 115, INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. L.

Case No. 20-R-1245.—Decided January 31, 1945

Pillsbury, Madison and Sutro, by *Mr. Norbert Korte*, of San Francisco, Calif., and *Messrs. Frank V. Galbraith* and *W. B. Kelley*, of Pittsburg, Calif., for the Company.

Mr. K. C. Apperson, of Stockton, Calif., and *Mr. Felix J. Dumond*, of Martinez, Calif., for the I. A. M.

Mr. A. W. Hannaford, of Oakland, Calif., for the Paper Makers.

Mr. Sidney Grossman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Concord Lodge 1173, affiliated with District Lodge 115, International Association of Machinists, A. F. L., herein called the I. A. M., alleging that a question affecting commerce had arisen concerning the representation of employees of Johns-Manville Products Corporation, Pittsburg, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Wallace E. Royster, Trial Examiner. Said hearing was held at San Francisco, California, on December 7, 1944. The Company and the I. A. M. appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Company moved to dismiss the petition for the reason that the unit petitioned for is inappropriate and that no question concerning representation has arisen. Ruling was reserved for the Board. For the reasons stated in Sections III and IV, *infra*, the motion is denied. The Trial Examiner's

¹ The International Brotherhood of Paper Makers, Pittsburg Local 329, A. F. L., herein called the Paper Makers, appeared at the hearing but did not intervene in view of its disinterest in the employees comprising the unit proposed by the I. A. M.

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

Johns-Manville Products Corporation, a Delaware corporation, is engaged in the manufacture of building papers, roofing, siding, pipe covering, gaskets, and commercial asphalt at its Pittsburg, California, plant, with which this proceeding is concerned. During the past year, a substantial portion of raw materials and supplies was secured for its use from sources outside the State of California. During the same period, finished products manufactured by it exceeded \$1,500,000 in value, of which approximately 30 percent was shipped to points outside the State of California.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Concord Lodge 1173, affiliated with District Lodge 115, International Association of Machinists, A. F. L., is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company and the Paper Makers, since 1937, have entered into successive yearly contracts, to which the I. A. M. has also been a party since 1940. Both the I. A. M. and the Paper Makers have been recognized in such contracts as the joint collective bargaining representative of the Company's production and maintenance employees. On September 22, 1944, the I. A. M. addressed a letter to the Company, wherein it stated that it represented a majority of the employees in the alleged appropriate unit and requested recognition as the exclusive representative thereof. The Company, by letter dated October 2, 1944, refused to grant recognition for the reason that it then recognized the I. A. M. and the Paper Makers as the joint bargaining representative of all production and maintenance employees in the plant.

A statement of a Board agent, introduced into evidence at the hearing, indicated that the I. A. M. represents a substantial number of employees in the unit hereinafter found appropriate.²

²The Field Examiner reported that the I. A. M. submitted 13 signed authorizations, of which 8 were dated in September 1944, 4 in October 1944, and 1 was undated, in an alleged appropriate unit consisting of 20 employees.

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 I. A. M. requests a separate unit consisting of the maintenance machinists, their helpers, and apprentices, in the Company's erection and repair department at its Pittsburg, California, plant, excluding office and clerical employees, and all supervisory employees. The Company is opposed to the inclusion of these employees in a unit separate from that of the other employees in the plant, while the Paper Makers has expressed disinterest in the proposed severance.

In support of its contention, the Company refers to the assignment of machinists to other departments and their interchange with production employees, and to the history of collective bargaining on a plant-wide basis in which the I. A. M. participated jointly with the Paper Makers. However, the record discloses that the machinists consist of a group of employees who possess skills characteristic of their craft, receive a higher rate of pay than production employees, and are directly responsible to the plant engineer in the erection and repair department to which they are officially assigned. In addition, the record does not establish an appreciable interchange of employees. While we do not minimize the form in which the bargaining relations between the parties have progressed, a factor which usually plays a prominent role in our considerations, we are not persuaded that, by its joint collaboration with the Paper Makers, the I. A. M. has ceased to represent the group of employees in which it is primarily interested or that these employees have ceased to function as a separate cohesive group. Moreover, as stated above, the Paper Makers raises no objection to the severance of the machinists from the plant-wide unit. In view of the foregoing considerations, we find that the machinists may appropriately constitute a separate unit for the purposes of collective bargaining.³

We find that all maintenance machinists, their helpers, and apprentices, in the Company's erection and repair department at its Pittsburg, California, plant,⁴ excluding office and clerical employees, and all or any 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.

³ Cf. *Matter of Phelps Dodge Corporation, United Verde Branch*, 56 N. L. R. B. 1560; *Matter of General Tire and Rubber Company*, 55 N. L. R. B. 250; *Matter of Westinghouse Electric & Manufacturing Company*, 49 N. L. R. B. 445.

⁴ These categories do not include firemen, the oiler, and the clerical and storeroom employee, but includes Charles M. Crooks, machinist.

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 representation for the purposes of collective bargaining with Johns-Manville Products Corporation, Pittsburg, California, 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 Twentieth 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 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 or not they desire to be represented by Concord Lodge No. 1173, International Association of Machinists,⁵ affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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

⁵ The request of the I. A. M. to appear on the ballot as designated above is hereby granted.