

IN THE MATTER OF AEROIL PRODUCTS COMPANY, INC., EMPLOYER and DISTRICT #161 OF INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

Case No. 2-RC-890.—Decided October 19, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Warren H. Leland, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner and the Intervenor, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 274, are labor organizations claiming to represent employees of the Employer.

3. The question concerning representation:

The Employer and the Intervenor contend that their current contract constitutes a bar to this proceeding.¹

The contract was executed on April 20, 1948, to be effective for 2 years from April 8, 1948. It contains the following provision:

All persons hired for job classifications within the bargaining unit shall, as a condition of employment, be required to affiliate with the Union within thirty (30) days after the completion of the temporary or trial period of their employment and maintain membership in the Union during the period of the agreement. It is agreed, however, that in the event that a majority of the employees of the unit vote in an election conducted by the Na-

¹ They therefore moved at the hearing to dismiss the petition. For the reasons set forth in this section, the motions are hereby denied.

tional Labor Relations Board for union security, then all employees of the unit shall as a condition of their continued employment remain members of the Union in good standing for the duration of this contract.

On or about May 17, 1948, the Intervenor filed a petition for a union authorization election under Section 9 (e) (1) of the Act; at the election held pursuant to this petition, a majority of the eligible employees voted for the authorization of a union shop; and on July 6, 1948, the Acting Regional Director issued his "Certificate of Results of Union Authorization Election." On November 22, 1948, the petition herein was filed.

Ordinarily a 2-year contract operates as a bar to a determination of representatives during its term. In our opinion, however, the union-security provision set forth above is inconsistent with law, and therefore prevents the present contract from serving as a bar.² Section 8 (a) (3) of the Act permits an employer and a labor organization, under certain conditions, to make an agreement "to require as a condition of employment membership [in the labor organization] *on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later.*" (Emphasis supplied). The Intervenor has been certified as being authorized to make such an agreement with the Employer. However, the second sentence of the union-security provision of the contract was clearly intended to require membership in the Intervenor as a condition of employment for all employees in the unit, without regard to whether they had served at least 30 days. In this respect, the provision goes beyond the limited form of union-security agreement permitted by Section 8 (a) (3) of the Act, and is therefore contrary to law, whether or not a union authorization election has been held.³ For this reason, without regard to other considerations,⁴ we find that the contract is not a bar to this proceeding.

Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

² *Matter of C. Hager & Sons Hinge Manufacturing Company*, 80 N. L. R. B. 163.

³ *Matter of The Dayton Steel Foundry Company*, 85 N. L. R. B. 1499; *Matter of Nicholson Transit Company*, 85 N. L. R. B., No. 124; *Matter of Continental Bus System, Inc.*, 84 N. L. R. B. 670; *Matter of Broadway Iron and Pipe Corporation*, 83 N. L. R. B. 942; *Matter of Morley Manufacturing Company*, 83 N. L. R. B. 404; *Matter of Hawley & Hoops, Inc.*, 83 N. L. R. B. 371; *Matter of American Export Lines, Inc.*, 81 N. L. R. B. 1370.

⁴ The Petitioner contends that the contract covers an inappropriate unit because working foremen are included, and that it should not therefore operate as a bar. In view of our finding, below, that working foremen are properly included in the unit, we find no merit in this contention.

4. The appropriate unit:

The parties agree that all the Employer's production and maintenance employees, excluding office and clerical employees, professional employees, watchmen, guards, and supervisors, constitute an appropriate unit. The only dispute is as to working foremen. The Employer and the Intervenor would include them in the unit; the Petitioner contends that they are supervisors and should therefore be excluded. They are included in the unit covered by the existing contract between the Employer and the Intervenor.

The Employer manufactures industrial oil burning equipment, parts, and accessories. At its plant in South Hackensack, New Jersey, the only plant involved in this proceeding, the Employer has approximately 102 production and maintenance employees and 11 or 12 working foremen. Each of the working foremen has a small group of employees for whom he lays out work, and to whom he transmits orders given him by the production manager; but he spends approximately 90 percent of his time doing the same type of work as the men in his group. He works the same hours and under the same working conditions as other production employees and, like them, is paid on an hourly basis, although he receives 15 cents an hour more than other employees in the same classification. The working foreman has no authority to hire, discharge, promote, discipline, or lay off employees, or effectively to recommend such action; he can recommend merit increases for men in his group only to the shop steward, who takes up the matter with management. We find that working foremen are not supervisors within the meaning of the Act, and we shall, accordingly, include them in the unit.⁵

We find that all production and maintenance employees employed at the Employer's South Hackensack, New Jersey, plant, including working foremen, but excluding office and clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and

⁵ *Matter of Beatrice Foods Company*, 84 N. L. R. B. 512; *Matter of William H. Hill*, 81 N. L. R. B. 1341; *Matter of Adams Motors, Inc.*, 80 N. L. R. B. 1518; *Matter of The Standard Printing Company, Inc.*, 80 N. L. R. B. 338.

supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by District #161 of International Association of Machinists, or by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 274, AFL, or by neither.