

In the Matter of G. H. R. FOUNDRY DIVISION OF THE DAYTON MALLEABLE IRON COMPANY, EMPLOYER AND PETITIONER *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), LOCAL 768 AND INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 798, C. I. O.,¹ UNIONS

Case No. 9-RM-54.—Decided March 21, 1950

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Alan A. Bruckner, 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 [Members Houston, Reynolds, and Murdock].

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 labor organizations named below claim to represent employees of the Employer.
3. The question concerning representation:

The United Electrical, Radio and Machine Workers of America (UE), Local 768, hereinafter called UE, affiliated with the C. I. O., until November 2, 1949, has had contractual relations with the Employer covering the employees involved herein since 1940. The last contract between the Employer and the UE, executed before November 2, 1949, is terminable on June 1, 1950. Evidence was introduced at the hearing tending to show that the Local Union had disaffiliated from the UE and had affiliated with the International Union of Electrical, Radio and Machine Workers, CIO, hereinafter called IUE-CIO, with a resultant break-down in the normal bargaining relationship between the Employer and the representative of its employees. However, inasmuch as the UE specifically waives its right to contend that

¹ As amended subsequent to the hearing.

the current contract constitutes a bar to a present determination of representatives with regard to this proceeding, we find it unnecessary to rule upon the evidence of a schism in the contracting union or the contract bar issue.

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.

4. The appropriate unit:

The parties are generally agreed that the appropriate unit is that conforming to the history of collective bargaining and the current contract.

The IUE-CIO would include and the Employer and UE would exclude a group of 32 employees referred to as *shop clerks*.² These employees, previously excluded from the bargaining unit, are factory clericals employed in the maintenance department, cleaning or finishing room, core assembly room, and molding department. Their specific classifications include those of stock clerks, scaldmen, shipping clerks, checkers, and counters. They are paid on an hourly basis as are the production and maintenance employees and receive approximately the same vacation, insurance, and sick benefits. They are supervised by the foremen of the various departments in which they are employed. Although the work of some of the shop clerks includes counting the items produced by other employees for the purpose of computing incentive pay, we find no merit in the contention of the UE and the Employer that the shop clerks are confidential employees closely allied to management.³ We have previously held that such employees may properly be included in the same unit with production and maintenance employees.⁴ We shall therefore include them.⁵

The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees employed at the Employer's Dayton, Ohio, plant, including shop clerks but excluding office and clerical employees, co-op students, student engineers, technical employees, professional employees, guards,⁶ and all supervisors.

² The parties agreed that the term shop clerk includes employees designated in the petition as timekeepers.

³ *H. O. Canfield Company*, 76 NLRB 606; cf. *Eclipse Machine Division, Bendix Aviation Corporation*, 60 NLRB 308.

⁴ *Wichita Falls Foundry & Machine Co.*, 69 NLRB 458.

⁵ See, *Lone Star Producing Company*, 85 NLRB 1137.

⁶ The record reveals that these employees perform the normal duties of plant protection employees in guarding the Employer's property against fire and other hazards. We find that they are guards within the meaning of the amended Act.

DIRECTION OF ELECTION ⁷

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 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 payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll 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 United Electrical, Radio and Machine Workers of America (UE), Local 768; or by International Union of Electrical, Radio and Machine Workers, Local 798, C. I. O.,⁸ or by neither.

⁷ Any participant in the election directed herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

⁸ Local 798, IUE-CIO is a new organization substituting for and with the consent of Local 768, IUE-CIO. It has not yet complied with Section 9 (f), (g), and (h) of the amended Act. The participation of Local 798, IUE-CIO, in the election directed herein is conditioned upon its full compliance with those provisions of the Act within 2 weeks from the date of this Direction. See, *General Motors Corporation*, 88 NLRB 450.