

In the Matter of FOSTER WHEELER CORPORATION, EMPLOYER AND PETITIONER and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL No. 440, UNION

Case No. 4-RM-52.—Decided April 28, 1950

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Harold Kowal, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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 Reynolds, Murdock, and Styles].

Upon the entire record in this case,² the Board finds:

1. The Employer, a New York corporation with its principal office and plant at Carteret, New Jersey, manufactures steam generating, oil refinery equipment. During the past year, it purchased equipment and supplies valued in excess of \$1,000,000, all of which were shipped from points outside the State of New Jersey. During the same period, the Employer manufactured finished products, valued in excess of \$7,000,000, all of which were shipped to points outside the State of New Jersey. Although the Union declined to stipulate that the Employer is engaged in commerce within the meaning of the Act, we find that it is so engaged.

2. The labor organizations involved claim to represent certain employees of the Employer.³

3. The question concerning representation:

The Union contends that its current contract with the Employer,

¹ International Union of Electrical, Radio and Machine Workers, Local No. 440, CIO, herein called the Intervenor, was permitted to intervene as a necessary party.

² The Union's request for oral argument is hereby denied, as the record and the briefs submitted, in our opinion, adequately set forth the issues and the positions of the parties.

³ Although the Union refused to stipulate that the Intervenor's Local No. 440 is a labor organization, and the Intervenor refused to so stipulate as to the Union's Local No. 440, we find that both of such locals are labor organizations, as defined in the Act.

which expires June 23, 1950, constitutes a bar to the petition filed herein on November 18, 1949.⁴ The Employer has bargained with the Union since 1941. On November 2, 1949, the Union was expelled and disaffiliated from the C. I. O., and a charter of affiliation was issued to the Intervenor which now claims recognition under the above-mentioned contract. On November 4, 1949, by unanimous vote, the members of the Union disaffiliated therefrom and affiliated with the Intervenor. On November 8, 1949, the Intervenor requested the Employer to sign a supplemental recognition agreement. The Employer advised the Intervenor that such request would be referred to counsel and that the Employer would recognize the Intervenor's "present Local Union Committee . . . excepting as to dues collected," which would be held in escrow pending a determination as to whom they should be paid. Although the Employer received no communication from the Union subsequent to November 4, 1949, the Union appeared at the hearing and not only raised the issues already mentioned, but also disputed the Intervenor's right to act as bargaining representative under the contract.

For the reasons stated in *Boston Machine Works Company*,⁵ we find that the Employer's contract with the Union does not bar a present redetermination of representatives. We therefore conclude that the conflicting claims to representation of the two labor organizations involved herein can best be resolved by an election.

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.

4. The appropriate unit:

The Employer and the Intervenor request a single unit, composed of hourly⁶ and salaried⁷ employees. On the other hand, the Union contends that hourly and salaried employees should constitute two separate units.

The Employer recognized the Union as representative of the hourly employees in 1941, and of the salaried employees in 1943. Since 1943, hourly and salaried employees have been handled in single bargaining conferences, and bargaining contracts have contained portions dealing

⁴ The Union moved to dismiss the proceeding upon this ground. For the reasons set forth hereinafter, the motion is hereby denied.

⁵ 89 NLRB 59.

⁶ Hourly employees are described in the petition as "all of the production and maintenance employees of the Company and shop clerks, but excluding superintendents, assistant superintendents, foremen, and assistant foremen not performing manual work, watchmen, guards, and office employees."

⁷ Salaried employees are described in the petition as "all salaried employees in the following departments: Accounting and Cost, Heat Exchanger, Machine Shop, Erection and Assembly, Boiler Shop, Receiving, Inspection Traffic, Mailing Messenger, Addressograph, First Aid, and Firemen, but excluding all Department and Assistant Department Heads, Foremen and Assistant Foremen."

with both groups together and also portions dealing with each group separately.⁸ The hourly group is primarily a production and maintenance body, while the salaried group is primarily an office clerical force. Supervision for each group is different, and there is little interchange between them.

As the bargaining history of the employees involved tends to establish more clearly a pattern of bargaining on a two-unit than on a single-unit basis, and as the record does not disclose the requisite homogeneity for a single unit of hourly and salaried employees, we are of the opinion that the unit requested by the Employer and the Intervenor is inappropriate. Moreover, we perceive no justification for including, in this instance, salaried employees, who constitute primarily an office clerical force, with a group of rank-and-file production and maintenance employees.⁹ Accordingly, we find that hourly and salaried employees should constitute two separate units.¹⁰

We find that the following group of employees constitute separate units appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All production and maintenance employees at the Employer's Carteret, New Jersey, plant, including shop clerks, but excluding superintendents, assistant superintendents, foremen, assistant foremen not performing manual work, watchmen, guards, office clerical employees, and supervisors as defined in the Act.
2. All salaried employees at the Employer's Carteret, New Jersey, plant in the following departments: Accounting and Cost, Heat Exchanger, Machine Shop, Erection and Assembly, Boiler Shop, Receiving, Inspection Traffic, Mailing Messenger, Addressograph, First Aid, and Firemen, but excluding all department heads, assistant department heads, foremen, assistant foremen, guards, professional employees, and supervisors as defined in 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 45 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

⁸ The current contract is divided into three parts. Part I applies to "Hourly and Salaried Employees." Part II applies to "Hourly Employees Only." Part III applies to "Salaried Employees Only." Hourly and salaried employees are defined in the contract in terms identical with those set forth in the petition.

⁹ See *Buckeye Rural Electric Co-operative, Inc.*, 88 NLRB 196, and cases cited therein.

¹⁰ See *Sperry Gyroscope Company*, 88 NLRB 907.

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, Local No. 440,¹¹ or by International Union of Electrical, Radio and Machine Workers, Local No. 440, CIO, or by neither.

¹¹ As United Electrical, Radio and Machine Workers of America, Local No. 440, is not in compliance, the Regional Director is instructed that its name shall not be placed upon the ballot unless it effects compliance within 2 weeks from the date of this Direction.