

In the Matter of WHITE SEWING MACHINE CORPORATION, EMPLOYER  
and INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE  
WORKERS, CIO, LOCAL 721, PETITIONER

Case No. 8-RC-624.—Decided May 11, 1950

DECISION

AND

DIRECTION OF ELECTIONS

Upon a petition duly filed, a hearing was held before Philip Fusco, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

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

Upon the entire record in this case, the Board finds: <sup>2</sup>

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

2. All parties agree that International Union of Electrical, Radio & Machine Workers, CIO, herein called the IUE, United Electrical,

<sup>1</sup> After the close of the hearing, International Union of Operating Engineers, AFL, Local 589, herein called the Operating Engineers, filed a motion with the Board requesting that its name be placed on the ballot in any election which might be directed among production and maintenance employees. At the time of the hearing the Operating Engineers made no claim to represent these employees. Its motion is based on the assertion that *after the hearing* it obtained a substantial number of authorization cards among production and maintenance employees. In accordance with our long-established practice, we will not permit a union to participate in an election on the strength of a showing of interest acquired after the close of the hearing. The motion is denied. *Grand Central Airport Company*, 70 NLRB 1094.

<sup>2</sup> United Electrical, Radio and Machine Workers of America, herein called the UE, an intervenor in this proceeding, moved to dismiss the petition on the ground that the use by the Petitioner's local of the numerical designation 721, the same number used by the UE's local at the plant involved, causes confusion among the Employer's employees and is fraudulent in purpose. The alleged fraud goes to the property rights of the unions involved, upon which we do not purport to pass. We have already held in a similar situation, that the use of the same number by competing unions does not confuse the voters in an election like that hereinafter directed. *Radio Corporation of America*, 89 NLRB 699. The motion is therefore denied.

For the same reason, the UE's further motions to dismiss the petition, made after the close of the hearing, on the ground that conflicting claims to property rights are now being litigated in the courts, and a temporary restraining order has been issued, are also denied. See *Sperry Gyroscope Company*, 88 NLRB 907.

Radio & Machine Workers of America, and International Union of Operating Engineers, A. F. L., are labor organizations. However, the IUE contends that the UE's affiliate, herein called Local 721-UE, is not a labor organization, and, conversely, the UE disputes the status of the IUE's affiliate, herein called Local 721-IUE, as a labor organization.

Local 721-IUE is composed of employees of the Employer who were formerly members of Local 721-UE. On November 20, 1949, at a membership meeting of Local 721-UE, a majority of the employees present voted to disaffiliate from the UE and to seek affiliation with the CIO. Thereafter, this group received a charter from the IUE. Under the name International Union of Electrical, Radio & Machine Workers, CIO, Local 721, it then complied with the filing requirements of the Act and filed the instant petition. All its officers had held similar positions with Local 721-UE.

Local 721-UE has represented the bulk of the Employer's employees for the purpose of collective bargaining for a number of years. Following the disaffiliation meeting of November 20, 1949, it has continued to function through an administrative committee, which was established to conduct the affairs of the local. Its last meeting, held on November 24, 1949, was attended by 44 employees.

Upon the foregoing facts, we are satisfied that both Local 721-IUE and Local 721-UE now exist for the purpose of admitting employees to membership and to deal with the Employer on matters relating to wages and other working conditions.<sup>3</sup> Accordingly, we find that International Union of Electrical, Radio & Machine Workers, CIO, and its affiliate Local 721; United Electrical, Radio & Machine Workers of America, and its affiliate Local 721; and International Union of Operating Engineers, AFL, are labor organizations claiming to represent certain employees of the Employer.<sup>4</sup>

3. The question concerning representation:

The UE and Local 721-UE contend that a collective bargaining agreement now in effect between them and the Employer constitutes a bar to this proceeding. By its terms, this contract, covering the employees here involved, is to remain in effect until June 30, 1950. The IUE and its Local 721-IUE, on the other hand, assert that the facts in this case reveal a schism in the contracting unions and ask that for this reason an election be held. The Employer is neutral but is unwilling to bargain with either the UE or the IUE because

<sup>3</sup> *Sperry Gyroscope Company, supra.*

<sup>4</sup> For the same reason we hereby deny the IUE's motion to strike the intervention of the UE and Local 721-UE on the ground that they are defunct.

of the confusion as to which labor organization now represents its employees.

As a result of the intraunion split revealed by the record in this case, the IUE and the UE challenge, with some show of right, each others' claim to representative status. In these circumstances, the normal bargaining relationship between the Employer and the former bargaining representatives of its employees has become a matter of confusion and the contract between them can no longer be said to promote stability in labor relations. On substantially similar facts, we have found that a current contract between the employer and the preexisting bargaining representative is not a bar to a present determination of representatives.<sup>5</sup> We conclude, therefore, that in this instance also the conflicting claims of the labor organizations involved can be best resolved by an election.<sup>6</sup> Accordingly, the motion to dismiss the petition on the ground of a contract bar is denied.

We find that questions affecting commerce exist 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 determination of representatives:

Except for the proposed inclusion, fully discussed below, of patrol inspectors, production control clerks and watchmen in the production and maintenance unit, the parties agree to the composition of a production and maintenance unit and of a voting group, for purposes of a self-determination election, of powerhouse employees.<sup>7</sup>

*Patrol Inspectors:* Contrary to the contention of the IUE and the UE, the Employer asserts that 37 Patrol Inspectors are supervisors and should be excluded from the unit. These employees patrol the production departments, and check the quality of the manufactured products. They watch for defective workmanship and have authority to stop a job when it is being improperly performed. They make written reports respecting the quality of the work performed by individual employees. Although they are directly supervised by an inspection foreman, who in turn reports to a chief inspector, Patrol Inspectors make their headquarters in or near the production departments where they spend the majority of their time. Although the record reveals no instance of their exercise of supervisory authority, the Employer's representatives testified without contradiction, that

<sup>5</sup> *Boston Machine Works Company*, 89 NLRB 59.

<sup>6</sup> In view of our finding herein, we find it unnecessary to pass upon the IUE's further contention that the contract is not a bar because of an allegedly illegal union-security clause.

<sup>7</sup> The Operating Engineers intervened to request severance of the powerhouse employees from an existing industrial unit. As all parties are in agreement, we perceive no reason for denying a "Globe" election to these employees.

they have authority effectively to recommend the hire or discharge of production workers. There is no testimony to the contrary. In these circumstances, we find that they are supervisors, and we shall exclude them from the unit.

*Production Control Clerks:* The Employer would also exclude as supervisors, contrary to the contention of the IUE and the UE, 34 production control clerks. These employees work in the production departments. Their principal task is to keep time records, weigh and tag production parts, make computations, and record the quantity of work produced. They may reject defective work, and thus affect the earnings of production employees. They have no authority to hire, discharge, or discipline production employees. We find that these employees are factory clericals and not supervisors as defined in the Act.<sup>8</sup> We shall therefore include them in the unit.

*Watchmen:* The UE would include, and the Employer and the IUE would exclude, the watchmen. The watchmen spend over 90 percent of their time guarding the entrances of the plant and protecting the Employer's premises. As they perform essentially guard duties, we shall exclude them from the production and maintenance unit.

In accordance with the agreement of the parties, we find that the powerhouse employees may, if they desire, constitute a separate appropriate unit. However, we shall make no unit determination at this time, but shall first ascertain the desires of the employees themselves as expressed in the elections hereinafter directed.

We shall direct that an election be held in each of the following voting groups, excluding from each group all supervisors as defined in the Act:

1. All production and maintenance employees at the Employer's Cleveland and Lakewood, Ohio, plants, including janitors, toolroom employees, inside truck drivers, sorter inspectors, and production control clerks, but excluding patrol inspectors, firemen, firemen helpers, foremen, assistant foremen, supervisory group leaders, supervisory lead men, nurses, time-study employees, cafeteria employees, outside truck drivers, watchmen, office and clerical employees, guards, and professional employees.

2. All firemen and firemen helpers at the Employer's Cleveland and Lakewood, Ohio, plants, excluding the chief engineer, and all other employees.

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<sup>8</sup> *Farrell-Cheek Steel Company*, 88 NLRB 303.

DIRECTION OF ELECTIONS<sup>9</sup>

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, separate elections 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 voting groups described in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Elections, 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:

(1) Whether or not the employees in Voting Group No. 1 desire to be represented for purposes of collective bargaining by International Union of Electrical, Radio & Machine Workers, CIO, Local 721; and

(2) Whether the employees in Voting Group No. 2 desire to be represented for purposes of collective bargaining by International Union of Electrical, Radio & Machine Workers, CIO, Local 721, or by International Union of Operating Engineers, AFL, or by neither.

<sup>9</sup> United Electrical, Radio & Machine Workers of America, and its Local 721, are omitted from the ballot because of the failure of Local 721-UE to comply with the filing requirements of Section 9 (f), (g), and (h) of the Act. In the event Local 721-UE effects compliance with the filing requirements of the Act within 2 weeks of the date of this Direction, the Regional Director is instructed to accord the UE and Local 721-UE a place on the ballot in the elections directed herein.