

In the Matter of AIR REDUCTION SALES COMPANY OF AIR REDUCTION COMPANY, INC., EMPLOYER AND PETITIONER *and* INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, CIO, AND LOCAL 707, INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, CIO, UNION *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, AND LOCAL 707, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, UNION

Case No. 8-RM-32.—Decided May 19, 1950

DECISION

AND

DIRECTION OF ELECTION

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.

Pursuant 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:

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, and United Electrical, Radio & Machine Workers of America, herein called the UE, are labor organizations. However, the IUE contends that the UE's affiliate, Local 707, herein called Local 707-UE, is not a labor organization, and, conversely, the UE disputes the status of the IUE's affiliate, herein called Local 707-IUE, as a labor organization.

Local 707-UE is an amalgamated local, representing employees in a number of plants in the Cleveland area. It was formerly affiliated with the CIO through its parent, the UE. On November 2, 1949, the UE's affiliation with the CIO terminated. On November 27, 1949, at a membership meeting of Local 707-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 of Local 707, International Union of Electrical, Radio & Machine Workers, CIO, it then complied with the filing requirements of the Act and notified the Employer of its claim to representation. Three of the four union stewards at the Employer's plant and all the former officers of Local 707-UE have continued to serve in the same capacity in the new union.

Local 707-UE has represented the Employer's employees for a number of years. Following the disaffiliation meeting of November 27, 1949, it has continued to function through newly elected or appointed officers. Its last meeting, held on March 15, 1950, was attended by six employees.

Upon the foregoing facts and the record as a whole we are satisfied that both Local 707-IUE and Local 707-UE exist for the purpose of admitting employees to membership and of dealing with the Employer on matters relating to wages and other working conditions.¹ Accordingly, we find that International Union of Electrical, Radio & Machine Workers, CIO, and its affiliate Local 707, and United Electrical, Radio & Machine Workers of America, and its affiliate Local 707, are labor organizations claiming to represent employees of the Employer.

3. The question concerning representation :

On April 1, 1948, the UE and Local 707-UE executed a contract with the Employer covering the employees involved herein. The agreement was to be effective until April 1, 1950, and thereafter from year to year in the absence of an appropriate 90-day termination notice. Local 707-UE contends that this contract is a bar to a present determination of representatives. The IUE argues that the contract is not a bar because it was terminated in accordance with its terms, and on the further ground that Local 707-IUE is the successor to the contractual rights of Local 707-UE. The Employer is neutral and at the hearing stated that, as it does not know which union represents its employees, it is unwilling to bargain with either Local 707-IUE or Local 707-UE.

As more fully set forth in Section 2 above, Local 707-IUE grew out of, and is staffed by, substantially the same officers and stewards as the older Local 707-UE. On the basis of substantially the same facts as shown here, the Board has held that a contract between the Employer and the preexisting bargaining representative is not a bar to an immediate election for the purpose of resolving a question con-

¹ *Sperry Gyroscope Company*, 88 NLRB 907.

cerning representation.² As a result of the intraunion split revealed by the record in this case, each of two contending unions challenges with some show of right the other's claim to representative status. The normal bargaining relationship between the Employer and the UE has become a matter of confusion, because of the events described above, and the relationship between them can no longer be said to promote stability in industrial relations. To treat the contract as a bar to a present redetermination of representatives would seriously impede rather than encourage the practice of collective bargaining which the Act was designed to foster and protect. We therefore believe that the conflicting claims to representation of the two labor organizations involved can best be resolved by an election.

We find, therefore, that the contract between the UE and the Employer is not a bar to this proceeding.³

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 agree to the composition of a production and maintenance unit, except with respect to the assistant shipping manager, whom the Employer would exclude as a supervisor or office clerical employee. The IUE and UE would include him in the unit. The record shows that although this employee performs some manual labor, he spends the greater part of his time at a desk in the distribution department where he performs clerical duties. He takes the place of the shipping manager in the manager's absence. In this capacity he may hire, discharge, or discipline production employees. As assistant shipping manager he may, and on occasion does, effectively recommend discipline of production workers. It is clear, and we find, that the assistant shipping manager is a supervisor within the meaning of the Act. We shall therefore exclude him.

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

All production and maintenance employees of the Employer's three plants in Cleveland, Ohio, located at 1210 West 69th Street, 1331 Chardon Road, and 1402 East 222d Street, excluding office and clerical employees, truck drivers, truck driver's helpers, the assistant shipping manager, professional employees, guards, and supervisors as defined in the Act.

² *Boston Machine Works Company*, 89 NLRB 59.

³ In view of our finding herein, we deem it unnecessary to pass upon the IUE's further contention that the contract is not a bar because it was terminated in accordance with its terms and because Local 707-UE is not a party thereto.

DIRECTION OF ELECTION ⁴

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 International Union of Electrical, Radio & Machine Workers, CIO, Local 707, or by United Electrical Radio & Machine Workers of America, Local 707, or by neither.⁵

⁴ The UE requested that any election directed herein be held simultaneously with other elections involving this same union in cases now pending before the Board (*General Electric Co.*, Cases Nos. 5-RM-114, *et al.*). As no persuasive reason appears for departing from our established custom, we will follow the usual practice, leaving the date of the election herein to the discretion of the Regional Director.

⁵ Either 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.