

In the Matter of SYRACUSE CHILLED PLOW Co., INC., and UNITED FARM
EQUIPMENT & METAL WORKERS OF AMERICA, CIO

Case No. 3-R-935.—Decided April 25, 1945

Mr. Eugene von Wellsheim, for the Board.

Fraser Bros., by *Mr. Henry S. Fraser*, of Syracuse, N. Y., for the Company.

Mr. Sidney H. Greenberg, of Syracuse, N. Y., and *Mr. Peter Aversa*, of Auburn, N. Y., for the Union.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Farm Equipment & Metal Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Syracuse Chilled Plow Co., Inc., Syracuse, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held on March 5, 1945, at Syracuse, New York. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company's motion to dismiss is denied for reasons hereinafter stated. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Syracuse Chilled Plow Co., Inc., a New York corporation, has its principal office and place of business at Syracuse, New York, where it is engaged in the manufacture of various types of farm implements.

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During the calendar year 1944, the Company used at its Syracuse, New York, plant, raw materials valued in excess of \$400,000, of which more than 50 percent represented shipments made to the Company's plant from points outside the State of New York. During the same period, the Company manufactured at its said plant, finished products valued in excess of \$600,000, of which more than 60 percent was shipped to points outside the State of New York.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Farm Equipment & Metal Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated January 20, 1945, the Union notified the Company that it represented a majority of its employees and requested a conference for the purpose of negotiating an agreement. The Company declined to bargain with the Union unless and until certified by the Board.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties are in substantial agreement that the appropriate unit should consist of all production and maintenance employees, includ-

¹The Trial Examiner reported that the Union had submitted 99 authorization cards, of which 40 were dated January 1945, and 59 undated, from a total of approximately 200 employees within the claimed appropriate unit.

Upon the grounds that the report of the Trial Examiner was hearsay and that no opportunity had been afforded it to cross-examine the Field Examiner with respect to the authorization cards aforesaid, the Company objected to the admission into evidence of the Field Examiner's report and subsequently moved to dismiss the Union's petition. In support of its objection and motion to dismiss, the Company contends that the admission into evidence of the Field Examiner's report on authorizations without affording the Company an opportunity to inspect the authorization cards or cross-examine the Field Examiner with respect thereto, is a denial of due process of law as guaranteed by the Fifth Amendment to the Constitution. We find no merit in this contention. "As we have frequently stated, the report of a Board agent with respect to a claim of authorization for the purposes of representation is taken, not as proof of the precise number of employees who desire to be represented by a labor organization, but rather to protect the Company and the Board from unfounded claims by such organizations and to give reasonable assurance that a substantial number of employees desire to be represented." *Matter of Amos-Thompson Corporation*, 48 N. L. R. B. 423-425 (footnote). See also *Matter of Seneca Falls Machine Company*, 58 N. L. R. B. 1413; *Matter of United Aircraft Corporation, Pratt & Whitney Aircraft Division (East Hartford and Packard Plants)*, 60 N. L. R. B. 190.

ing factory clerical employees in the forge, foundry, and shipping departments, but excluding office clerical employees, militarized guards, part-time employees, power engineers, superintendents, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The parties disagree as to the following specific categories:

Temporary employees: The Company employed as of the date of the hearing four men classified as temporary employees. These men are local farmers hired by the Company since the conclusion of the last growing season and who, pursuant to an agreement by the Company with the United States Employment Service and the Local Selective Service Board, are required to leave the Company's employ and return to their regular farm work not later than April 1, 1945. The evidence indicates that at the time they leave they will be given permanent releases from the Company without expectation of future reemployment. The Union contends that such employees should be included within the unit while the Company urges that they be excluded therefrom. Since it appears that these employees have little prospect of continued employment by the Company, we find that their interest is insufficient to warrant including them within the unit for the purposes of collective bargaining.² Accordingly, we shall exclude them from the appropriate unit.

Jamaicans and Barbadians: The employees thus referred to apparently occupy the same or similar status from the point of view of their employment by the Company. The Company presently contends that they should be excluded from the unit. While the Union would include these employees, it does not press its contention.³ Jamaicans and Barbadians are employees whose employment with the Company is definitely limited to a period of 90 days under a passport arrangement between the Governments of the United States and Great Britain. Their wages, hours of work, and general conditions of employment are fixed by individual contracts, approved by their Government and executed by and between each employee, the Company, and an agent of War Manpower Commission representing the United States Government. Under the circumstances, we find that Jamaicans and Barbadians are employees without substantial interests in collective bargaining. We shall, accordingly, exclude them from the appropriate unit.

² See *Matter of Columbus & Southern Ohio Electric Company*, 57 N. L. R. B 1540

³ At the hearing, the parties agreed that Jamaicans should be excluded from the unit and subsequent thereto, signed a stipulation providing for the exclusion of both Jamaicans and Barbadians from the unit. The Union thereafter requested that if be released from the stipulation but later withdrew its request; however, at the same time it reiterated its belief that the Jamaicans and Barbadians are more properly included in the unit.

Watchmen: The Company employs five watchmen. The Union seeks their inclusion while the Company asks that they be excluded from the appropriate unit upon the ground that they perform a function directly related to management. The record discloses that none of the watchmen herein concerned are militarized, deputized, armed or uniformed; that all perform the usual duties of watchmen and are paid on an hourly basis. Following our usual practice under such circumstances, we shall include the watchmen aforesaid within the unit hereinafter found appropriate.⁴

Group leaders: The three employees referred to under this title, while not formally classified as group leaders, are regarded as such by the Company by reason of their responsibilities with respect to maintaining production in their respective departments. The Union seeks their inclusion while the Company urges that they be excluded from the unit as supervisory employees. In view of the fact that they have varying duties and apparently different degrees of supervisory authority, each of the three individuals herein concerned will be considered separately for the purpose of determining whether or not they have substantial supervisory authority.

Gene Barnaba, the shaker in the foundry who acts as leader for approximately eight employees on the night shift, has been in the Company's employ for about 23 years and is considered to be one of the most skilled employees in the foundry, having in addition to the task of instructing new employees, the sole responsibility with respect to the operation of a complicated piece of machinery known as a sand cutting machine. While in his position as leader on the night shift, Barnaba apparently gives only routine instructions left by the foreman to be relayed to other foundry employees, the evidence is undisputed to the effect that he would report to the foreman the next day the failure on the part of any new employee to do his work properly. Moreover, it appears that any complaints or grievances of employees that require immediate attention during the night shift are presented to Barnaba in the absence of the foreman of the department. Since in addition to his authority to report on the work performed by other employees, it appears that Barnaba is the only person in authority on the night shift during which he is charged with the sole responsibility for the conduct of operations and the handling of the Company's labor relations in connection with grievances and complaints of employees, we find that he has substantial supervisory authority in respect to the employees herein concerned.⁵ Accordingly, we shall exclude him from the unit.

⁴ See *Matter of Pass and Seymour, Inc.*, 51 N. L. R. B. 1430; *Matter of Peterson & Lytle*, 60 N. L. R. B. 1070.

⁵ See *Matter of The Midvale Company*, 57 N. L. R. B. 1359; *Matter of Dallas Power & Light Company*, 60 N. L. R. B. 1088.

Otto Herman, referred to as the discount man on the day shift, is primarily an inspector who classifies defects in castings as the fault of either the Company or the employees concerned therewith. The record reveals that Herman has authority to make recommendations to the general foreman regarding changes of status for the five employees in his group; that he may, in an emergency, transfer employees from one job to another; and that he would report to the foreman if any man was not performing his work satisfactorily. It also appears that Herman has recently made at least one effective recommendation with respect to an employee who was removed from the cleaning room upon the former's recommendation and against the wishes of the transferred employee. Under the circumstances, we find that Herman is a supervisory employee within the meaning of our usual definition. We shall exclude him from the unit.

Luke Skinner, otherwise known as the export shipper, is in charge of and works with a group of 4 to 10 employees engaged in the packing and crating of finished products for shipment. While there is evidence to the effect that Skinner directs the employees with whom he works, the record does not establish that he is a supervisory employee within the meaning of our usual definition. Upon the entire record, we find that Skinner is essentially an ordinary shipping employee without supervisory authority.⁶

The factory clerk fire inspector: While both parties agree to the inclusion of ordinary factory clerks in accordance with the Board's usual policy in this respect,⁷ the parties are at issue regarding a single individual classified as a factory clerk who is engaged in making fire inspections throughout the plant and doing clerical work connected with that of the main office. The Union urges that this employee be excluded from the unit, while the Company contends that all employees in the classification of factory clerk should be included without distinction. The record reveals, however, that the factory clerk herein concerned does not work under the foremen in the factory and that the clerical duties he performs have to do with general office work. We shall exclude him from the unit hereinafter found appropriate.⁸

We find that all production and maintenance employees of the Company at its Syracuse, New York, plant, including watchmen, the export shipper, and factory clerical employees in the forge, foundry, and shipping departments, but excluding temporary employees, part-time

⁶ See *Matter of Fairbanks Morse and Co.*, 40 N L R B. 455. See also *Matter of The Hoover Crown Corporation*, 51 N L R B. 1353.

⁷ See *Matter of Goodman Manufacturing Company*, 58 N L R. B. 531; *Matter of J S Abercrombie Company*, 58 N L R. B. 1013, *Matter of Kearney & Trecker Corporation*, 60 N L R B. 148, *Matter of Douglas Aircraft Company, Inc.*, 60 N L R B. 876.

⁸ See *Matter of Columbus & Southern Ohio Electric Co.*, 57 N L R B. 1540.

employees, Jamaicans and Barbadians, the shaker leader in the foundry, the discount man, the factory clerk fire inspector, office clerical employees, militarized guards, power engineers, superintendents, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Syracuse Chilled Plow Co., Inc., Syracuse, New York, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Farm Equipment & Metal Workers of America, CIO, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.