

In the Matter of AIR PRODUCTS, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS (A. F. OF L.)

In the Matter of AIR PRODUCTS, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS (A. F. OF L.); INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION No. 910; UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION No. 74

*Cases Nos. 10-R-1248 and 10-RE-13, respectively.—Decided
May 5, 1945*

Messrs. Charles A. Noone, R. C. McEwan, and Donald C. MacCloud, of Chattanooga, Tenn., for the Company.

Mr. Paul Chipman, of Atlanta, Ga., *Mr. J. C. McGlou,* of Birmingham, Ala., and *Messrs. O. H. Dye and F. E. Seeley,* of Chattanooga, Tenn., for the Machinists.

Messrs. John M. Greene and F. E. Slayton, of Chattanooga, Tenn., for the Operating Engineers.

Mr. J. C. Barrett, of Birmingham, Ala., and *Mr. J. B. Henderson,* of Chattanooga, Tenn., for the Carpenters.

Mr. Gordon Freeman, of Chattanooga, Tenn., for the IBEW.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Association of Machinists (A. F. of L.), herein called the Machinists, alleging that a question affecting commerce had arisen concerning the representation of employees of Air Products, Inc., Chattanooga, Tennessee, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Chattanooga, Tennessee, on November 14, 1944. The Company, the Machinists, the International Union of Operating Engineers, Local Union No. 910, herein called the Operating Engineers, and the United Brotherhood

¹ At the hearing the name of the Company was amended as designated above 61 N. L. R. B., No. 155.

of Carpenters and Joiners of America, Local Union No. 74, herein called the Carpenters, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearings are free from prejudicial error and are hereby affirmed. Thereafter, on December 4, 1944, while the petition of the Machinists was still pending before the Board, the Company filed a petition alleging that a question affecting commerce had arisen concerning the representation of its employees. On January 20, 1945, pursuant to a motion filed by the Company, the Board issued an order reopening the record, consolidating the Company's case with that of the Machinists, remanding the proceedings to the Regional Director, and authorizing the Regional Director to issue notice of further hearing. Said further consolidated hearing was held upon due notice at Chattanooga, Tennessee, on February 15, 1945, before Arthur C. Joy, Trial Examiner. The Company, the Machinists, the Carpenters, the Operating Engineers, and the International Brotherhood of Electrical Workers, Local Union No. B-1396, herein called the IBEW, appeared, participated, and 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. All parties were afforded an 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

Air Products, Inc., a Michigan corporation, with its principal office and place of business at Chattanooga, Tennessee, is engaged in the manufacture of equipment for the production of oxygen, hydrogen, nitrogen, and other gases. During the past 12 months the Company purchased raw materials consisting of copper sheet and tubing, steel plates and shapes, gasoline engines, air compressors, electric motors, and other materials valued in excess of \$1,000,000, of which more than 95 percent was secured from sources outside the State of Tennessee. During the same period the Company sold and delivered equipment in excess of \$3,000,000 in value, all of which was shipped to points outside the State of Tennessee.

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

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, United Brotherhood of Carpenters & Joiners of America, Local Union No. 74, International Union of Operating Engineers, Local Union No. 910, and International Brotherhood of Electrical Workers, Local Union No. B-1396, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 3, 1944, the Machinists addressed a letter to the Company requesting therein recognition as the bargaining representative of the Company's employees. The Company responded by letter dated August 4, 1944, in which it refused to grant recognition until the Machinists had been certified by the Board in an appropriate unit. Requests for recognition by the remaining parties herein were met with similar refusal by the Company.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Machinists, the Carpenters, the Operating Engineers, and the IBEW represent a substantial number of employees in the respective units hereinafter found appropriate.²

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 DETERMINATION OF REPRESENTATIVES

The Machinists seeks a unit consisting of all employees of the Company, at its Chattanooga, Tennessee, plant, including inspectors, janitors, stockroom employees, and leadermen, but excluding general office employees, factory clerical employees, guards, nurses, professional and technical employees, outside truck drivers, maids, foremen, assist-

² The Field Examiner reported that the Machinists submitted 141 designations of which 134 bore dates between June and September 1944, and 7 were undated; the names of 105 persons appearing thereon were listed on the Company's pay roll of November 1, 1944, in an alleged appropriate unit consisting of 226 employees; 26 additional cards were submitted at the hearing but were not checked against the pay roll.

The Carpenters submitted 21 designations of which 3 bore dates in June 1944, 3 in November 1944, and 15 were undated, the names of 12 persons appearing thereon were listed on the pay roll above referred to, in an alleged appropriate unit consisting of 75 employees.

The IBEW submitted 8 designations of which 1 was dated in November 1944, 6 in December 1944, and 1 was undated; the names of 5 persons appearing thereon were listed on the above-mentioned pay roll in an alleged appropriate unit consisting of 8 employees.

The Operating Engineers submitted 17 designations of which 14 bore dates in November 1944, 2 in December 1944, and 1 was undated; the names of 9 persons appearing thereon were listed on the pay roll of November 1, 1944, in an alleged appropriate unit of 28 employees.

ant foremen, the storekeeper in the stockroom, and all other supervisory employees. The Company is in agreement with the general composition of the foregoing unit, but would also include therein the outside truck drivers and maids. In the main, the I. B. E. W., the Carpenters, and the Operating Engineers, seek units coextensive with their respective craft jurisdictions.

The Company's manufacturing operations are conducted in numerous departments located on a single floor of the premises that it occupies. Although these departments are not separated from each other by any physical barrier, each is comprised of a separate group of employees devoted to work characteristic of their department. However, the record discloses frequent intermingling among the employees of the various departments, utilization of common plant facilities by all employees, and a high degree of interdependency in the production process. Thus, it is clear that a plant-wide unit, as proposed by the Machinists, and concurred in by the Company, would be appropriate for the purposes of collective bargaining. On the other hand, counterbalancing considerations tend to indicate that the groups sought by the remaining unions herein consists of employees who perform duties characteristic of skilled crafts and therefore could appropriately constitute separate units for collective bargaining purposes. In this situation, we shall permit the scope of the bargaining unit or units to be determined, in part, by the results of separate elections which we shall hereinafter direct. There remains for consideration the specific composition of the several voting groups.

The IBEW would include electrical overhead crane operators in its unit. These employees are disassociated from the electrical workers in that they work under separate supervision in the maintenance department. At times other maintenance employees also operate the overhead cranes. We have previously expressed our opinion that crane operators do not constitute such a skilled craft³ as would warrant their inclusion in a unit of electrical workers such as is here sought. We shall, therefore, exclude the electrical overhead crane operators from the voting group of electrical workers. We shall also exclude the assistant foreman in the electrical department, whom the IBEW would also include, since he possesses supervisory authority within our customary definition.

The Carpenters requests the inclusion of millwrights and the assistant foreman in the carpentry department. The Company does not have employees classified as "millwrights" in its employ. However, the Carpenters desires to include within its proposed unit those employees engaged in "assembling and installing machinery." The Company employs approximately 63 employees in its jacket assembly department

³ *Matter of Bethlehem-Hingham Shipyard, Inc*, 54 N. L. R. B. 631.

who assemble component parts of the equipment produced by the Company, and about 6 employees in the final assembly department who generally complete the final installation and assembly of the finished products prior to testing and shipping. Although carpenters may work in these departments, as well as in other departments of the plant, they do not ordinarily perform the work of assembly men. Moreover, assembly men work under separate supervision in their respective departments, and while they possess mechanical ability, their employment is not predicated upon any skills characteristic of the carpenter craft. The above facts afford no basis for including assembly men with the carpenters in a separate craft unit. We shall, therefore, exclude "millwrights" and assembly men from the voting group of carpenters. We shall also exclude the assistant foreman in the carpentry department who it appears possesses supervisory authority within our usual definition.

As indicated above, the Company would include, and the Machinists would exclude, from the residual production and maintenance unit, outside truck drivers and maids. The maids' duties are similar to those of the janitors whom the Machinists would include. Since no cogent reason appears for their exclusion, we shall include the outside truck drivers and the maids in the residual production and maintenance group.

We shall order elections among the employees of the Company at its Chattanooga, Tennessee, plant, within each of the groups listed below, excluding therefrom foremen, assistant foremen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

1. All employees engaged in performing electrical work, including journeymen and apprentice electricians, but excluding overhead crane operators.

2. All carpenters, excluding "millwrights" and assembly men.

3. All employees in the testing department, including mechanics, leaderman, and compressor operators, and the firemen in the maintenance department.

4. All remaining employees of the Company, including inspectors, janitors, maids, stockroom employees, outside truck drivers, overhead crane operators, assembly men, and leadermen, but excluding general office employees, factory clerical employees, the storekeeper in the stockroom, guards, nurses, and professional and technical employees.

As indicated above, upon the results of the elections in said groups will depend, in part, our determination of the appropriate unit or units.

DIRECTION OF ELECTIONS

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 Air Products, Inc., Chattanooga, Tennessee, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Tenth 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 who were employed by the Company during the pay-roll period immediately preceding the date of this Direction of Elections, 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 who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the elections.⁴

1. The employees in the first voting group described in Section IV, above, to determine whether they desire to be represented by Local Union B-1396, International Brotherhood of Electrical Workers, or by Lodge 56, International Association of Machinists, for the purposes of collective bargaining, or by neither;

2. All employees in the second voting group described in Section IV, above, to determine whether they desire to be represented by United Brotherhood of Carpenters & Joiners, Local No. 74, or by Lodge 56, International Association of Machinists, for the purposes of collective bargaining, or by neither;

3. All employees in the third voting group described in Section IV, above, to determine whether they desire to be represented by Local Union No. 910, International Union of Operating Engineers, or by Lodge 56, International Association of Machinists, for the purposes of collective bargaining, or by neither;

4. All employees in the fourth voting group described in Section IV, above, to determine whether or not they desire to be represented by Lodge 56, International Association of Machinists, for the purposes of collective bargaining.

⁴ The several unions expressed their preference at the hearing that their respective names appear on the ballot as set forth in the Direction of Elections