

In the Matter of AIR REDUCTION SALES CORPORATION and METAL
POLISHERS, BUFFERS, PLATERS & HELPERS INTERNATIONAL UNION,
A. F. OF L., LOCAL 194

Case No. 2-R-5194.—Decided May 18, 1945

Mr. Tom C. Clark, of New York City, and *Mr. S. F. Isler*, of Jersey City, N. J., for the Company.

Mr. Edward Scheuermann, of Newark, N. J., for the Polishers.

Mr. Stephen M. Estey, of New York City, for the Machinists.

Mr. Louis Monas, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Metal Polishers, Buffers, Platers & Helpers International Union, A. F. of L., Local 194, herein called the Polishers, alleging that a question affecting commerce had arisen concerning the representation of employees of Air Reduction Sales Corporation, Jersey City, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at New York City on April 4, 1945. The Company, the Polishers, and International Association of Machinists, Lodge No. 304, A. F. of L., herein called the Machinists, 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. 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 Reduction Sales Corporation, a Delaware corporation with its principal office in New York City and branch offices, plants and fac-

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tories located throughout the United States, is engaged in the manufacture, distribution, and sale of compressed industrial gases as well as apparatus and supplies for their use and application. This proceeding solely concerns the Company's plant at Jersey City, New Jersey, where it is engaged only in the manufacture of apparatus. During the year immediately preceding December 4, 1944, the Company purchased materials for its Jersey City plant valued in excess of \$1,000,000, approximately 90 percent of which was obtained from sources outside the State of New Jersey. During the same period, it manufactured and sold finished products at its Jersey City plant which were valued in excess of \$1,000,000, approximately 90 percent of which was shipped by it to points outside that State. The Company, at this plant, is almost wholly engaged in the production of materials for war purposes.

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

II. THE ORGANIZATIONS INVOLVED

Metal Polishers, Buffers, Platers & Helpers International Union, Local 194, and International Association of Machinists, Lodge No. 304, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Since 1937 the Machinists has bargained with the Company for a comprehensive unit of production and maintenance employees at the Jersey City plant, including the group now claimed by the Polishers.¹ On July 15, 1943, a contract was executed by the Company and the Machinists which covered "hourly paid production, maintenance, shipping and receiving departments, and general and manufacturing stores, employees" at the Company's Jersey City plant. This contract was to remain in effect until August 31, 1944, and thereafter until either party gave the other 30 days' written notice of termination. In August 1944, the parties commenced negotiations with respect to a revision of the contract, but agreed that, in the meantime, it was to continue in effect.

¹ Such bargaining continued on an oral basis until 1941. Commencing with 1941, this bargaining was evidenced by written contracts. In that year a consent election agreement was entered into by the Company, the Machinists, and the Polishers, which provided, however, that only the Machinists would appear on the ballot in an election among the Jersey City plant's production and maintenance employees; in the ensuing election held on July 16, 1941, in which the employees petitioned for herein participated, the Machinists was designated by a majority of the production and maintenance employees as their bargaining representative (Case No. 2-R-2387). As a result of the election, the Company and the Machinists entered into their first written contract on August 18, 1941. This contract continued in effect, with some modifications, until July 15, 1943.

During the course of these negotiations, in which the Company, the Machinists, and the Polishers participated, the Polishers took the position that it no longer desired to be represented by the Machinists in bargaining with the Company on behalf of the employees whom it represented.² It demanded separate recognition and requested the Company to deal with it directly for such employees. Upon the Company's refusal to accede to this request, the Polishers filed its petition herein.

At the hearing, the Company contended that the employees whom the Polishers now seeks had been represented by the Machinists and consequently it would not accord recognition to the Polishers. The Company did not specifically urge the existing contract as a bar to this proceedings.³ The Machinists, as hereinafter noted, took the position that it no longer desired to represent the employees sought by the Polishers.

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the Polishers represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 Polishers seeks a unit of all buffers, polishers, platers, platers' helpers, and sprayers, comprising department 21 of the Company's Jersey City plant, excluding supervisory employees. The Company is opposed to the separation of these employees from the unit of production and maintenance employees which has been represented by the Machinists since 1937.

It appears from the record that the employees now sought by the Polishers constitute a skilled, homogeneous group, under separate supervision. While they have been bargained for by the Machinists, this situation resulted from an arrangement between that organization

² From 1937 until 1944, the Machinists, with the consent of the Polishers, acted for the employees now sought by the latter organization.

³ Disregarding for the moment the negotiations to revise the contract, after August 31, 1944, the agreement, already in effect for 1 year, became one of indefinite duration, and cannot, therefore, bar the instant proceeding. See *Matter of Gerber Products Company*, 59 N. L. R. B. 1362. Moreover, in their dealings in August 1944, the parties merely agreed orally to continue the contract in operation without specifying a terminal date, and it is, therefore, plain that it cannot serve to preclude a present determination of representatives, for it was extended for an indefinite period by an understanding not reduced to writing. See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035; and *Matter of Gerber Products Company*, *supra*.

⁴ The Field Examiner reported that the Polishers submitted 27 authorization cards, all of which bore the names of persons appearing on the Company's pay roll of December 4, 1944, containing the names of 31 employees in the alleged appropriate unit.

and the Polishers made as a matter of accommodation to the Company which persistently refused to treat with two labor organizations instead of one. These employees have never been members of the Machinists, have, in fact, always belonged to the Polishers, and presently desire that the Polishers represent them directly. Furthermore, the Machinists has relinquished the right to represent them and has ceded jurisdiction over them to the Polishers. Consideration of all these facts impels us to the conclusion that the unit desired by the Polishers is appropriate.⁵

We find that all buffers, polishers, platers, platers' helpers, and sprayers, comprising department 21 of the Company's Jersey City plant, excluding all 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 Air Reduction Sales Corporation, Jersey City, New Jersey, 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 Second 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

⁵ See *Matter of Lever Brothers Company*, 57 N. L. R. B. 139; *Matter of Caterpillar Tractor Company*, 56 N. L. R. B. 122; and *Matter of General Tire and Rubber Company*, 55 N. L. R. B. 250.

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 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 Metal Polishers, Buffers, Platers & Helpers International Union, A. F. of L., Local 194, for the purposes of collective bargaining.