

In the Matter of W. D. PATTON, J. A. NICKUM, H. L. SEARS AND L. H. GAREY, COPARTNERS, D/B/A COSCO MANUFACTURING COMPANY and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, C. I. O.

Case No. 21-R-2835.—Decided June 22, 1945

Messrs. A. Maxson Smith and W. D. Patton, of Los Angeles, Calif., for the Company.

Judy Dunks, of Los Angeles, Calif., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Electrical, Radio and Machine Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of W. D. Patton, J. A. Nickum, H. L. Sears and L. H. Garey, copartners, d/b/a Cosco Manufacturing Company, Los Angeles, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Los Angeles, California, on May 18, 1945. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Company moved to dismiss the petition. The Trial Examiner reserved ruling thereon. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

62 N. L. R. B., No 96.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

W. D. Patton, J. A. Nickum, H. L. Sears, and L. H. Garey, copartners d/b/a Cosco Manufacturing Company, are engaged at Los Angeles, California, in general machine work to customer's specifications. From July 1, 1944, to March 1, 1945, the Company purchased labor and tooling valued at about \$200,000. During the same period its sales of labor and tooling were approximately \$373,000. From October 4, 1944, to May 4, 1945, the Company received from Bendix Aviation Corporation at North Hollywood, California, materials valued at \$19,000, 30 percent of which originated outside the State of California. During the same period Bendix Aviation Corporation received products from the Company valued at about \$56,000, approximately 70 percent of which was shipped to points outside the State of California by Bendix Aviation Corporation. During the 12-month period ending March 1944, Rheem Manufacturing Company at Los Angeles, California, supplied parts for rework to the Company valued at about \$6,600, all of which was obtained outside the State of California and all of which was shipped to points outside the State of California after reprocessing by Rheem Manufacturing Company.

We find, contrary to the contentions of the Company, that its business affects commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 12, 1945, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's employees. The Company refused this request until such time as the Union is certified by the Board.

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

¹ The Field Examiner reported that the Union presented 33 application cards bearing apparently genuine signatures of persons whose name appear on the Company's pay roll of April 27, 1945. There are approximately 55 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

The Union urges that all production and maintenance employees of the Company, excluding engineering employees, draftsmen, office employees, and supervisory employees, constitute an appropriate bargaining unit. The Company contends that all of its employees, excluding only the members of the partnership, constitute an appropriate unit.

The Company employs persons classified as shop foreman, chief inspector, leadmen, toolroom foreman, and employee in charge of purchasing and receiving. The record indicates that all of these persons are supervisors within the meaning of the Board's definition of that term. Accordingly, we shall exclude them from the unit.

Since no affirmative showing has been made, nor any compelling arguments advanced as to why we should depart from our usual practice of excluding clerical employees from a unit composed of production and maintenance employees, we shall exclude the clerical employees from the unit.

We shall likewise exclude the draftsmen and engineering employees from the unit because of their special training and skill, in accordance with our usual practice of not including professional or technical employees in the same unit with regular production and maintenance employees.

We find that all production and maintenance employees of the Company, excluding clerical employees, engineering employees, draftsmen, executive employees, shop foreman, chief inspector, leadmen, toolroom foreman, employee in charge of purchasing and receiving, and any 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 means of 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 W. D. Patton, J. A. Nickum,

H. L. Sears, and L. H. Garey, copartners, d/b/a Cosco Manufacturing Company, Los Angeles, California, 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 Twenty-first 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 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 Electrical, Radio and Machine Workers of America, C. I. O., for the purposes of collective bargaining.