

In the Matter of MINES EQUIPMENT COMPANY and UNITED ELECTRICAL,
RADIO & MACHINE WORKERS OF AMERICA, CIO

Case No. 14-C-1016.—Decided July 27, 1945

Ryburn L. Hackler, for the Board.

Messrs. Daniel Bartlett and *John Hanlon*, of St. Louis, Mo., for the respondent.

Mr. Victor Pasche, of St. Louis, Mo., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Electrical, Radio & Machine Workers of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated January 20, 1945, against Mines Equipment Company, St. Louis, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance (1) that all employees engaged in Departments 4 and 5 of the respondent's operations, exclusive of clerical, plant-protection, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (2) that, on August 30, 1944, a majority of the employees in said unit designated the Union as their representative for the purposes of collective bargaining with the respondent; (3) that, on or about November 10, 1944,

62 N. L. R. B., No 203.

the Union requested the respondent through its officers and agents to bargain collectively with the Union as exclusive representative of all employees in said unit as to rates of pay, wages, hours of employment, and other conditions of employment; and (4) that, on or about November 10, 1944, and at all times thereafter, the respondent refused and continues to refuse to bargain collectively with the Union as the exclusive representative of all employees in said unit. On January 30, 1945, the respondent filed an answer in which it denied the material allegations of the complaint.

Thereafter, the respondent, the Union, and the Board's Attorney entered into a stipulation in substance waiving hearing and providing that, in lieu thereof, the record in the instant proceeding should consist of the stipulation and the entire record and briefs in a Board representation proceeding entitled "*In the Matter of Mines Equipment Company and United Electrical, Radio and Machine Workers of America*," Case No. 14-R-919. The stipulation further provided that, upon the record so made, without further hearing on the complaint in the instant proceeding, an Intermediate Report by the Trial Examiner might be issued and filed or, in lieu thereof, the Board might issue Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order.

On February 16, 1945, the Board, acting pursuant to Article II, Section 36 (a), of National Labor Relations Board Rules and Regulations—Series 3, as amended, ordered that the proceeding be transferred to and continued before it for the issuance of proposed findings. On June 5, 1945, the Board issued its Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, and on June 20, 1945, the respondent filed exceptions thereto.

The Board has considered the exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, the briefs filed in Case No. 14-R-919, and the entire record in the case, and insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Mines Equipment Company, a Missouri corporation, is engaged at its plant in St. Louis, Missouri, in the manufacture, sale, and distribution of electrical connectors, instrument lights, and cable vulcanizers. During the calendar year 1943, it purchased raw materials consisting of rubber, brass, copper, steel, and aluminum valued at approximately \$3,000,000 of which 85 percent was shipped to it from points outside the State of Missouri. During the calendar year 1943, the respondent manufactured

finished products valued at approximately \$8,000,000, of which 90 percent was sold and transported to points outside the State of Missouri.

II. THE ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

1. The appropriate unit

On May 31, 1944, in Case No. 14-R-919, referred to above, the Board issued a Decision and Direction of Election,¹ directing that an election be conducted among all employees of the respondent at its Kingshighway plant, exclusive of clerical, supervisory, and plant-protection employees. At the time of the issuance of the said Decision and Direction of Election, Departments 4, 5, and 9 of the respondent's operations were located at the respondent's Kingshighway plant and all other departments of its operations were located at the respondent's Clayton plant. In its Decision of May 31, 1944, the Board considered the respondent's contention that its operations were so centralized that all unskilled employees at both plants should be represented in a single unit, and found that, for the reasons advanced by the respondent, unskilled employees at both plants might well constitute an appropriate unit for bargaining. The Board further found, however, that only the employees in the unit requested by the Union were desirous of immediate collective bargaining, and that the requested unit comprised an identifiable group of employees who might feasibly be represented, apart from other employees, for the purposes of collective bargaining. Under these circumstances, the Board found that a unit confined to that identifiable group was appropriate for immediate collective bargaining, but expressly provided that its determination of the appropriate unit would not preclude a reexamination of the issue at a later stage of employee organization.

On September 9, 1944, following an election which was won by the Union, the Board certified the Union as the exclusive bargaining representative of employees at the Kingshighway plant, exclusive of clerical, supervisory, and plant-protection employees.

Thereafter, on September 15, 1944, the respondent filed an "Application for Order to Set Aside Decision and Order of Election and Certificate of Representation," alleging, *inter alia*, that, since the issuance of the certification, the respondent had transferred all its employees at the Kingshighway plant to the Clayton plant, and that the factors upon which the

¹ 56 N. L. R. B. 1146

Board based its finding of appropriate unit in its *Decision and Direction of Election* were no longer present.

On October 11, 1944, a further hearing, pursuant to an order of the Board, dated September 26, 1944, reopening the record, was held upon due notice at St. Louis, Missouri, all parties participating. Upon consideration of all the evidence adduced therein, and the record theretofore made, the Board, on November 2, 1944, issued a Second Supplemental Decision and Amended Certification of Representatives in which it found (1) that Departments 5 and 9 of the respondent's operations had been combined and transferred from the Kingshighway plant to the Clayton plant; (2) that Department 4 had been retained at the Kingshighway plant, but was being terminated; (3) that the functions and supervision of the former Kingshighway employees had not been changed; and (4) that, although certain of the factors considered by the Board in its original unit determination no longer existed, the changes were not of "sufficient significance to render the employees now comprising Department 5 inappropriate as a unit and to deprive them of the right to bargain collectively in accordance with their desires as expressed while they were located at the Kingshighway plant." Accordingly, on November 2, 1944, the Board refused to set aside its certification, but, amending it to fit the changes in the respondent's organization, certified the Union as the exclusive bargaining representative of all employees engaged in Departments 4 and 5 of the respondent, exclusive of supervisory, clerical, and plant-protection employees.²

Thereafter, on November 13, 1944, the respondent filed with the Board a "Petition for Further Hearing and for Oral Argument," and the Board, on November 18, 1944, upon consideration thereof, denied the petition.

In briefs and other documents filed after issuance of the Board's *Decision and Direction of Election*, the respondent has questioned the accuracy of the findings upon which the Board based its original conclusion that the employees involved herein comprise an identifiable group, namely: (1) that transfers between departments of the respondent's operations are principally of a permanent nature; (2) that there were "substantially independent operations" carried on in the Kingshighway plant; and (3) that the employees in the Kingshighway plant were "primarily engaged in assembling and the Clayton plant in fabricating and processing."

Witnesses for the respondent testified that "borrowing" of employees was a common practice between plants. However, an analysis of the respondent's exhibits, listing all transfers effected for a period of approximately 5 months preceding the original hearings indicates that an average of two employees per month were temporarily transferred, all other transfers

² Although Department 4 was winding up operations, the Board held that the employees therein were entitled to be represented until the discontinuance of the department.

appear to be of a permanent nature.³ In our opinion, the extent and character of the transfers into and out of the unit heretofore found appropriate are insufficient to warrant a finding that the employees comprising the unit are not an identifiable group.

The Board's finding that "substantially independent operations" were carried on at the Kingshighway plant was based upon the fact that the Kingshighway plant⁴ handles a different product from that handled by any other department and upon the further fact that it has its own supervision and is geographically separated from other departments.⁵

The Board's finding that the Kingshighway plant primarily engaged in assembling and the Clayton plant in processing and fabricating was shown to need qualification in the hearing of October 11, 1944, when it appeared that Department 5 carried on processing as well as assembling operations, and that other departments at the Clayton plant were likewise engaged in both types of operations. Despite this fact, it is our opinion that the unit retains sufficient features of identity to warrant reaffirmation of our unit determination in our original Decision and Direction of Election, as thereafter modified.

We have reexamined the entire record in the case and have carefully considered argument of the respondent expressed in the afore-mentioned petitions, in briefs filed with the Board, at the hearing, and in the pleadings herein. We are not persuaded that we should alter the conclusions set forth in our previous decisions relating to the instant proceeding. It has long been the practice of the Board to grant the privileges of the Act to any group of employees desiring to exercise those privileges, although that group may appropriately comprise a part of a larger unit, if the group may feasibly function as an appropriate unit and if other employees in the larger group have indicated no desire to be represented by a collective

³ An exhibit introduced into evidence at the original hearing herein, as interpreted at the hearing by the respondent's assistant chief accountant, Joe E Hamill, indicates that, during the approximately 5-month period preceding the hearing, 42 persons, 3 of whom were supervisory employees, were transferred from the Kingshighway plant to the Clayton plant, and 38 were transferred from the Clayton plant to the Kingshighway plant; that the transfers to the Kingshighway plant included a group of employees placed in various departments of the plant after the department in which they had worked had been discontinued, and that, although a temporary transfer from 1 plant to the other and return to the plant of origin would be recorded as 2 transfers, 90 percent of the transfers recorded concerned different people, people who had been transferred into 1 plant or the other apparently permanently, since they had not been returned, in the 5-month period, to their place of origin. Another exhibit, introduced by the respondent at the original hearing, indicated that, of 141 persons working in Department 5 in August 1943, 7 had been transferred to departments in the Clayton plant sometime before October 1943. At the second hearing the respondent introduced an exhibit which indicated that of the 151 persons who were eligible to vote in the election, according to the pay roll of August 20, 1944, 7 had been transferred to departments outside the appropriate unit prior to the hearing on October 11, 1944. In its brief, the respondent stated that these exhibits do not reflect "the myriad of temporary day-to-day interdepartment transfers" that are made in its plant. There is nothing in the record upon which the respondent's statement can be based.

⁴ Presently Department 5

⁵ Department 5 occupies a complete building of the Clayton plant except for a large aisle used by Departments 1 and 2 for packaging

bargaining representative.⁶ It is our opinion that in this way we can best effectuate the purposes of the Act; to require organization in what might be the optimum unit for collective bargaining would indefinitely deprive persons desiring to be represented by a statutory representative of the means of collective bargaining.

Accordingly, we find that all the employees engaged in Departments 4 and 5 of the respondent's operations, excluding all office clerical employees, guards, watchmen, and 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.

2. Representation by the Union of a majority in the appropriate unit

On August 30, 1944, pursuant to a Supplemental Decision and Amended Direction of Election,⁷ an election was conducted among all employees of the respondent at its Kingshighway plant, exclusive of clerical, supervisory, and plant-protection employees. Of approximately 151 eligible voters, 116 cast valid votes, of which 61 were for the Union and 55 against. On September 9, 1944, the Board certified the Union as the statutory representative of the employees in the appropriate unit. In the subsequent merger, all production and maintenance employees at the Kingshighway plant, with the exception of employees of Department 4, were transferred in a body and have become Department 5 at the respondent's Clayton plant. On November 2, 1944, the Board amended its certification to indicate the changes in the respondent's organizational structure, as set forth above. We find that since August 30, 1944, the Union has been the exclusive representative of all the employees in the appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.⁸

⁶ See *Matter of RCA Communications, Inc.*, 2 N. L. R. B. 1109; *Matter of New Jersey Worsted Mills*, 35 N. L. R. B. 1303; *Matter of Indianapolis Water Company*, 48 N. L. R. B. 1399; *Matter of Standard Overall Company*, 53 N. L. R. B. 960; *Matter of Ladish Drop Forge Company*, 57 N. L. R. B. 1468.

⁷ 57 N. L. R. B. 1634.

⁸ In its answer, the respondent denies the allegation in the complaint that the Union represents a majority of its employees in the unit found appropriate by the Board. The denial is based upon the assumption that transfers and discharges of employees from the appropriate unit dissipated the Union's majority. Since nothing in the record identifies the transferees and discharges as union or non-union employees, we find no basis for the assumption. We assume, rather, that the majority status of the Union as reflected in the election of August 30, 1944, continued for a reasonable time after certification. See *N. L. R. B. v. Appalachian Electric Power Company*, 140 F. (2d) 217 (C. C. A. 4), enfg as mod. 47 N. L. R. B. 821. See also *Franks Brothers Company v. N. L. R. B.*, 321 U. S. 703.

3. The refusal to bargain

The respondent, in its answer, admits that on November 10, 1944, the Union requested that the respondent bargain with it on behalf of the employees in the appropriate unit, and that the respondent on that day refused and still refuses to bargain with the Union.

We find that, on November 10, 1944, and at all times since that date, the respondent has refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the aforesaid appropriate unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices affecting commerce, we shall order it to cease and desist therefrom and take certain affirmative action, which we find will effectuate the policies of the Act.

We have found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in the aforesaid appropriate unit. We shall order that the respondent bargain collectively with the Union upon request.

Upon the basis of the foregoing findings of fact and the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All employees engaged in Department 4 and 5 of the respondent's operations, excluding all office clerical employees, guards, watchmen, and 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.

3. United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, was on August 30, 1944,

and at all times thereafter has been, the exclusive representative of all the employees in said appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Mines Equipment Company, St. Louis, Missouri, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of employees engaged in Departments 4 and 5 of its operations, excluding office clerical employees, guards, watchmen, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action;

(b) Engaging in any like or related acts or conduct, interfering with, or restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all employees engaged in Departments 4 and 5 of its operations, excluding office clerical employ-

ees, guards, watchmen, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plants in St. Louis, Missouri, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fourteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not refuse to bargain with United Electrical, Radio & Machine Workers of America, CIO, as the exclusive representative of our employees in the bargaining unit described herein.

We Will Not engage in any like or related act or conduct interfering with, restraining, or coercing our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of this union, or any other labor organization.

We Will Bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: All employees engaged in Departments 4 and 5 of Mines

Equipment Company, St. Louis, Missouri, excluding all office clerical employees, guards, watchmen, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

MINES EQUIPMENT COMPANY (*Employer*)

By

(Representative)

(Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.