

In the Matter of ALLIS-CHALMERS MANUFACTURING COMPANY and
UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA,
LOCAL 613, CIO

Case No. 6-R-1132.—Decided July 31, 1945

Mr. W. J. McGowan, of Milwaukee, Wis., and *Messrs. Artemas C. Leslie* and *D. G. McArn*, of Pittsburgh, Pa, for the Company.

Messrs. Leo Turner, Dominic F. Dornetto, and John M. Duffy, of Pittsburgh, Pa., and *Mr. David Scribner*, of New York City, for the Union.

Miss Ruth Rusch, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio & Machine Workers of America, Local 613, CIO,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Allis-Chalmers Manufacturing Company, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on May 11, 1945. The Company and the Union appeared and participated.² All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Company moved to dismiss the Union's petition on the ground that the unit sought is inappropriate. The Trial Examiner reserved ruling for the Board on the Company's motion. For reasons

¹ At the hearing, the Trial Examiner granted the Union's motion to amend its name on all formal papers as set forth above

² The Union waived the unfair labor practice charges which it had theretofore filed against the Company insofar as they might constitute a basis for objecting to the instant proceeding.

hereinafter stated, the motion is denied.³ 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

The Company, a Delaware corporation, operates plants which are located in the States of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, Massachusetts, and California. This proceeding concerns only the Company's five plants in Pittsburgh, Pennsylvania, viz Bayard, Juniata, Manchester, River-new part and River-old part, which are engaged in the manufacture of electrical transformers and related products. During the past year, the Company purchased raw materials amounting to more than \$5,000,000 in value, of which approximately 65 percent came from sources outside the Commonwealth of Pennsylvania. In the same period, the Company sold finished products valued at more than \$10,000,000, of which approximately 85 percent was shipped to points outside the Commonwealth.

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

II. THE ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers of America, Local 613, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

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

³ The Union rested its case immediately after the formal papers were introduced, whereupon the Company also rested and moved to dismiss the petition on the ground that the burden was upon the Union to prove that the unit was appropriate. The Trial Examiner referred the motion to the Board for ruling thereon and proceeded with the hearing by calling witnesses who testified as to the matter before him. The motion is hereby denied. Proceedings under Section 9 (c) are not adversary proceedings but merely an investigation conducted by the Board for the purpose of determining the existence of a question concerning representation, and in that event, to resolve that question.

⁴ The Field Examiner reported that the Union submitted 32 application cards; that the cards were dated as follows: 12 in 1944; 9 in February 1945; 5 in March 1945; and 6 were undated; and that there were 62 persons in the unit petitioned for. At the hearing, it was testified that the number of employees in the unit had been reduced to approximately 47.

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

As a result of a Board-directed election in a prior representation proceeding, the Union was certified as the collective bargaining representative of the production and maintenance employees of the five plants here involved, excluding, *inter alia*, inspectors.⁵ At the present time, the Company and the Union are parties to an exclusive bargaining contract covering substantially the same unit. The Union now seeks a unit composed of all the Company's employees in the inspection department of its five plants in Pittsburgh, Pennsylvania, excluding clerical employees, inspectors who work out of Pittsburgh, the head inspector-metals, the chief inspector, the assistant chief inspector, and other supervisory employees. Opposing the Union's position, the Company contends that the unit sought herein is inappropriate since the inspectors are supervisory and managerial employees.

The same inspection department serves all five plants which are within a block of one another. The inspectors therein examine visually materials arriving at the plants, rejecting those which do not conform to specifications; inspect at various stages the parts and products manufactured at the plant to determine their conformity to company and customer specifications;⁶ and check the quantity or amount of work of each employee for the purpose of insuring that the flow of work is proceeding on schedule. In addition, inspectors help with the solution of problems in design when they arise in the shop, and in so doing work with the foreman, engineer, and superintendent. Although inspectors may also substitute for foremen when the latter are on vacation or are absent due to illness, the record discloses that this happens infrequently since there are others besides inspectors, such as instructors,⁷ who may replace foremen and since the foremen's absentee rate is low. From time to time inspectors may be used in the capacity of foremen on small jobs; however, it does not appear that either a substantial number of inspectors or a substantial amount of inspectors' time is taken up in this way. It is further clear from the

⁵ *Matter of Allis-Chalmers Manufacturing Company*, 4 N. L. R. B. 824. The unit in the cited case listed the five plants as: The Bayard plant, the Adams plant, the Juniata plant, the Manchester plant, and the Tannery plant. It would appear, however, that the names of two of the plants, *viz.*, Adams and Tannery have since been changed to River-new part and River-old part and that the same five plants are here involved.

⁶ If the superintendent of a department questions an inspector's rejection of an article which was made in his department, he may ask a committee composed of himself, the head engineer or a representative of the engineering department, and the chief inspector to settle the matter, and the ruling of the committee is final. However, in the event that the committee cannot agree, the opinion of the head engineer or representative of the engineering department is final.

⁷ On rare occasions inspectors will replace instructors.

record that the employees whose work they regularly inspect⁸ have foremen of their own. While the inspectors have duties which are important from the viewpoint of maintaining the Company's standards of production, they form an essential part of the Company's productive process and have no authority to hire, discharge, or recommend such action with respect to the employees whose work they regularly inspect. It is thus clear that inspectors do not fall within our customary definition of supervisory employees⁹ and that their interests are not allied with those of management.¹⁰ For reasons which we have already stated in other cases, we find the sundry other contentions raised by the Company to be without merit.¹¹ Accordingly, we find that inspectors constitute a homogeneous group and may comprise a unit appropriate for the purposes of collective bargaining.¹²

Inspectors' assistants: The Company also employs inspectors' assistants; these are new employees who are being trained for the position of inspector. In order to familiarize themselves with their duties, they assist the inspectors and, in so doing, perform substantially the same functions as the inspectors. Since the parties agree that there should be no differentiation between inspectors and their assistants, we shall include inspectors' assistants in the unit.

Senior inspectors: The Company employs four senior inspectors for its five plants in the Pittsburgh area. One of the senior inspectors works in two plants, while each of the others is assigned to one particular plant. The Union would include these employees in the unit. Although there is no evidence concerning the nature of their functions, the parties agree that there is no distinction between senior inspectors and inspectors. It is evident that these employees do not possess effective power to make recommendations as to hiring and discharging inspectors since the chief inspector and his assistant make independent investigations before any such action is taken. We shall include senior inspectors in the unit.

⁸ An inspector may on occasion be requested to comment on the work of an employee. However, as a rule, he is unaware of the operator's name at the time he trouble-tags an article, since the name is attached subsequently.

⁹ The Works Manager testified in general terms that inspectors "are considered within the supervisory group" and are so advised. The detailed evidence concerning their duties, however, persuades us that they are not supervisory within our customary definition of that term.

¹⁰ Although it appears that some inspectors are members of the Foreman's Club which was organized by supervisory employees for the purpose of discussing management problems, it does not appear that the Company looks to the Foreman's Club for help in forming its labor policy. In any event, we do not regard this factor as controlling in view of the other factors mentioned above.

¹¹ See *Matter of Crucible Steel Company of America, Atha Works*, 62 N. L. R. B. 1294, and cases cited therein.

¹² *Matter of McDonnell Aircraft Corporation*, 49 N. L. R. B. 897; *Matter of United Wall Paper Factories, Inc.*, 49 N. L. R. B. 1423; *Matter of Consolidated Vultee Aircraft Corporation*, 55 N. L. R. B. 577; *Matter of New York World-Telegram Corporation*, 58 N. L. R. B. 1149.

Head inspector-metals and inspectors who work out of the Pittsburgh plants: The Company employs a head inspector-metals¹³ and four inspectors¹⁴ who have their headquarters at the plants of the Company in Pittsburgh but work entirely outside these plants within a radius of several hundred miles of the plants. They inspect materials at the plants of various vendors for use at the Company's West Allis Works located in Milwaukee. Although these employees are paid by the Pittsburgh office, the office in Milwaukee reimburses the Pittsburgh office for all monies paid to these employees.¹⁵ The head inspector-metals sometimes channels directions and orders coming from the chief inspector in Pittsburgh to the four inspectors working in the field, but other than this, his duties are similar to those of other inspectors. He has no supervisory authority. The Union would exclude these employees from the unit, while the Company takes no position. Since these employees are working away from the Pittsburgh plants, we are of the opinion that the locale of their employment indicates a lack of community of interest with the other employees in the unit. We shall, therefore, exclude the head inspector-metals and the four inspectors who are working out of Pittsburgh from the unit.¹⁶

Chief inspector and assistant chief inspector: Although the record does not disclose the specific duties of the chief inspector¹⁷ and the assistant chief inspector,¹⁸ it is undisputed that their functions are of a supervisory nature. We shall, in accordance with the Union's request, exclude them from the appropriate unit.

Clerk: At present the Company employs one clerk¹⁹ in the inspection department who performs all the clerical work, such as keeping the time records and doing whatever stenographic work is required. In accordance with the Union's request, we shall exclude her from the unit as a clerical employee.

We find that all the Company's inspectors at its Bayard, Juniata, Manchester, River-new part and River-old part plants in Pittsburgh, Pennsylvania, including senior inspectors and inspectors' assistants, but excluding clerical employees, inspectors who work out of the Pittsburgh plants, the head inspector-metals, the chief inspector, the assistant chief inspector, 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.

¹³ Charles M. Garda

¹⁴ Stanley R. McKnight, Robert C. Kerr, Guy K. Truby, and Francis Sauerburger.

¹⁵ It is contemplated that these employees, who formerly worked inside the plants doing similar work to the other inspectors, will resume such duties at the end of the war.

¹⁶ See *Matter of Aluminum Company of America*, 61 N. L. R. B. 1066.

¹⁷ A. J. Becker

¹⁸ James W. Walsh.

¹⁹ Helen F. Domenick.

V. THE DETERMINATION OF REPRESENTATIVES

At the time of the hearing, the Company had reduced its staff of inspectors from 62 to 47. According to the Union, there is a possibility of further large reductions among employees in this category as war contracts terminate. The Union, therefore, requests that a pay-roll date as of the time of the hearing be used to establish eligibility in any election which the Board may direct. The Company, however, requested the usual pay-roll date, stating that, at the present, it has no knowledge of any further change in the number of inspectors. Under the circumstances, we see no reason for deviating from our usual practice in selecting a date for the purpose of determining eligibility. Accordingly, 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 Allis-Chalmers Manufacturing Company, Pittsburgh, Pennsylvania, 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 Sixth 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 the 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 & Machine Workers of America, Local 613, CIO, for the purposes of collective bargaining.