

In the Matter of RANE TOOL COMPANY, INC. and RANE INDEPENDENT UNION

Case No. 3-R-997.—Decided August 14, 1945

Mr. Clive L. Wright, of Jamestown, N. Y., for the Company.

Mr. Michael D. Lombardo, of Jamestown, N. Y., for the Independent.

Mr. Willard Bliss, of Syracuse, N. Y., for the U. E.

Mr. Joseph D. Manders, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Rane Independent Union, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Rane Tool Company, Inc., Jamestown, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. Said hearing was held at Jamestown, New York, on June 8, 1945. The Company, the Independent, and United Electrical Radio & Machine Workers of America, C. I. O.,¹ herein called the U. E., 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. At the hearing, the U. E. moved for a dismissal of the instant petition. For reasons set forth in Sections II and III, *infra*, the motion is denied. 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

Rane Tool Company, Inc., a New York corporation, is engaged in the manufacture of tools, such as dies, punch press dies, jigs, fixtures,

¹ At the hearing, the U. E.'s oral motion to intervene was granted.

and special machinery. At the present time, its entire production output is pursuant to war contracts. The Company's sole plant, located at Jamestown, New York, is involved in the instant proceeding. During the 12-month period ending June 1, 1945, the Company purchased raw materials valued in excess of \$177,000, approximately 28 percent of which was shipped from points outside the State of New York. During the same period, the Company manufactured finished products valued in excess of \$916,000, 38 percent of which was shipped to points outside the State of New York.

The Company admits that its operations affect commerce within the meaning of the National Labor Relations Act, and we so find.

II. THE ORGANIZATIONS INVOLVED

Rane Independent Union is a labor organization admitting to membership employees of the Company.²

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

III. THE QUESTION CONCERNING REPRESENTATION

On or about May 2, 1945, the Independent presented the Company with evidence of its representation in the alleged appropriate unit and requested recognition as the exclusive collective bargaining representative of the employees involved herein. The Company refused to grant recognition to the Independent until it is certified by the Board in an appropriate unit.³

Pursuant to a consent election, won by the U. E.,⁴ the Company and the U. E. entered into a collective bargaining agreement on May 9, 1944. The agreement provided for automatic renewal from year to year unless terminated by either party "at least thirty (30) days before the next annual expiration date . . ." The Company terminated the agreement on or about April 5, 1945.⁵ The agreement covered, *inter alia*, wages, overtime rates, hours of employment, vacations, seniority,

² At the hearing, the U. E. moved to dismiss the instant petition on the ground that the Independent is not a labor organization within the meaning of the Act. The record before us, including the bylaws of the Independent, which were submitted in evidence, clearly demonstrates that Rane Independent Union is a labor organization "which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." We find the motion to be without merit; and it is herewith denied.

³ As a further ground for refusal at that time, the Company referred to the existence of its contract with the U. E. which did not terminate until May 9, 1945.

⁴ This election was conducted by the Regional Director in November 1943.

⁵ The U. E. requested the Company to extend the agreement beyond May 9, 1945, the termination date, but the Company refused to accede. The Company's timely communication to the U. E. prevents such agreement from operating as a bar to an immediate determination of representatives.

and grievance procedures, but omitted consideration of automatic wage progressions with established wage bracket classifications, about which the parties were in dispute.⁶ That dispute was submitted to the Second Regional War Labor Board, which, on November 14, 1944, issued a Directive Order,⁷ requiring the parties to negotiate and establish, either by agreement or arbitration, a system of merit wage increases for the employees of the Company. On November 27, 1944, the Company filed a petition for review of the above Directive Order with the National War Labor Board. Subsequently, on May 8, 1945, the National War Labor Board issued a Directive Order, affirming with some modification, the order issued by the Regional Board.

The U. E. contends that its voluntary utilization of the orderly processes of the War Labor Board has deprived the employees of the Company of the enjoyment of the "most essential part of its entire collective bargaining agreement"; and, therefore, under the doctrine enunciated in *Matter of Allis-Chalmers Manufacturing Company*⁸ and cases following it, the Independent's petition should be dismissed. We find no merit in this contention. The issue involved in the War Labor Board dispute has not interfered unduly with the contractual program initiated by the U. E.⁹ On the contrary, the employees of the Company have received practically all of the fundamental benefits usually associated with collective bargaining.¹⁰ Under these circumstances, we are of the opinion that the U. E. has had sufficient opportunity to demonstrate its effectiveness as a collective bargaining representative, and must now look to the employees, themselves, for affirmation of its role as their collective bargaining representative. We hereby deny the U. E.'s motion to dismiss the petition.¹¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Independent represents a substantial number of employees in the unit hereinafter found appropriate.¹²

⁶ At the hearing, counsel for the Company stated that the Company was presently operating under a wage classification system which had been established for the employees of the Company by the National War Labor Board.

⁷ *Matter of Kane Tool Company, Inc.*, 19 War Labor Reports 936, Case No 111-7546-D.

⁸ 50 N L R B 306

⁹ Note contents of agreement outlined *supra*

The War Labor Board's order contains its customary provision as to retroactivity of wage adjustments. The retroactive date provided is May 9, 1944, and, therefore, is coincident with the inception of the U. E.'s contract.

¹⁰ Cf. *Matter of American-Marsh Pumps, Inc.*, 59 N L R B 1084; *Matter of Taylor Forge & Pipe Works*, 58 N L R B 1375

¹¹ See *Matter of Federal Screw Works*, 61 N L R B 387, *Matter of Great Lakes Carbon Corporation*, 57 N L R B 115, *Matter of Michigan Light Alloys Corp.*, 58 N L R B 113

¹² The Field Examiner reported that the Independent submitted 73 authorization cards, 69 of which bore apparently genuine original signatures of persons listed on the Company's pay roll of April 29, 1945, which contained the names of 130 employees in the alleged appropriate unit and that 69 of the cards were undated

The U. E. submitted its current contract as evidence of its representation in the alleged appropriate unit.

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 Independent contends that all production and maintenance employees, including draftsmen, but excluding office and clerical employees, executives, foremen, and all other supervisory employees, constitute the appropriate unit.¹³ The Company desires to remain neutral, and, therefore, takes no position as to the composition of the unit. The U. E. advanced no objection to the above specified inclusions and exclusions. However, there remain for disposition the following categories of employees:

Assistant foremen: There are approximately five such employees. In the absence of the foreman, the assistant foreman has the authority to supervise the quality of the work performed by his coworkers,¹⁴ but does not exercise the authority to hire, discharge, or effectively recommend changes in the status of these workers. The assistant foremen devote approximately 75 percent of their time to the performance of manual tasks; their remaining time is devoted to the type of supervisory activity described above. Both assistant foremen and production workers receive an hourly rate of pay. Vacations, sick leave, and other working conditions are also substantially the same for both types of employees. It appears that assistant foremen were included in the previous bargaining unit.¹⁵ The Independent urges the inclusion of the assistant foremen; the U. E. urges their exclusion. We find that these employees do not possess supervisory authority within the meaning of our customary definition; and we shall, therefore, include assistant foremen in the appropriate unit.

Plant guard: The Company employs one guard,¹⁶ who supervises the entrance and exit of authorized persons to and from the plant, and also patrols the entire plant. The guard wears a uniform, but he is not armed or deputized, nor does he exercise any monitorial authority. Heretofore the guard has been militarized and armed, and because of this fact was excluded from the previous bargaining unit, but he is no longer militarized. Upon the basis of the above facts, we shall include the plant guard in the appropriate unit.¹⁷

¹³ This unit is substantially the same as the one for which the U. E. bargained.

¹⁴ Such employee does not possess the authority to "shut-down" a machine whose operation is not meeting company standards

¹⁵ The U. E., contending that such employees were excluded from the contract unit, offered no evidence to substantiate this contention. On the other hand, a company witness testified that the name of an assistant foreman was included in a list containing the names of U. E. members in good standing.

¹⁶ This employee is also termed a "watchman"

¹⁷ See *Matter of Dortch Stove Works*, 52 N. L. R. B. 1450

We find that all production and maintenance employees including draftsmen, the plant guard and assistant foremen, but excluding office and clerical employees, executives, foremen, 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 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.¹⁸

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 Rane Tool Company, Inc., Jamestown, New York, 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 Third 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 those employees 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 they desire to be represented by Rane Independent Union or by United Electrical, Radio & Machine Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

¹⁸ The request of the U. E. to be designated on the ballot in a manner other than as set forth in the Direction of Election is hereby referred to the Regional Director.