

In the Matter of DANIEL RUBIN, THEODORE R. RUBIN, AND AARON GOLDSTEIN, INDIVIDUALLY AND AS CO-PARTNERS D/B/A DASCHER MANUFACTURING CO. and METAL POLISHERS, BUFFERS, PLATERS & HELPERS INTERNATIONAL UNION, LOCAL No. 90, A. F. OF L.

Case No. 4-R-1732.—Decided September 1, 1945

Mr. Theodore R. Rubin, of Philadelphia, Pa., for the Company.

Mr. Louis H. Wilderman, of Philadelphia, Pa., for the A. F. of L.

Mr. J. Leon Cort, of Philadelphia, Pa., for the C. I. O.

Mr. Julius Kirle, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS *

STATEMENT OF THE CASE

Upon a petition duly filed by Metal Polishers, Buffers, Platers & Helpers International Union, Local No. 90, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Daniel Rubin, Theodore R. Rubin, and Aaron Goldstein, individually and as co-partners d/b/a Dascher Manufacturing Co., Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Philadelphia, Pennsylvania, on May 24, 1945. The Company, the A. F. of L., and Dental, Surgical & Allied Workers, L. I. U. No. 119, C. I. O., herein called the C. I. O., 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

Dascher Manufacturing Co., a partnership consisting of Daniel Rubin, Theodore R. Rubin, and Aaron Goldstein, with its principal

* The above Decision and Direction of Elections was vacated and a new Decision and Direction of Elections subsequently issued on September 21, 1945 See 63 N. L. R. B. 1101.

place of business at Philadelphia, Pennsylvania, is engaged in the production and sale of surgical instruments. The Company uses annually raw materials consisting chiefly of brass, copper, and steel, valued at about \$18,000, approximately 75 percent of which comes from sources outside the Commonwealth of Pennsylvania. The Company's finished products are valued at about \$193,000 annually, approximately 99 percent of which is shipped to points outside the Commonwealth of Pennsylvania. Approximately 95 percent of the Company's products is devoted to the war effort.

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 No. 90, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Dental, Surgical & Allied Workers, L. I. U. No. 119, 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 any union as the exclusive bargaining representative of certain of its employees until certified by the Board in an appropriate unit.

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

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The C. I. O. claims as appropriate for collective bargaining a unit composed of all the Company's production and maintenance employees, including polishers and shippers, but excluding clerical and supervisory employees. The A. F. of L. seeks a separate unit for the polishers. The Company takes no position.

¹ The Field Examiner reported that the A. F. of L. submitted 6 designations consisting of 4 dues books and 2 cards, dated March and April 1945; and that there are 6 employees in the unit alleged to be appropriate by the A. F. of L. However, the record discloses that since the date of the report one of the employees in the polishers' unit had terminated his employment. The C. I. O. submitted 16 cards, 9 of which were dated from August 1944 through April 1945, and 7 of which were undated. The record discloses that there are 25 employees in the unit alleged to be appropriated by the C. I. O.

The polishers perform all the polishing work on the instruments processed by the Company. Their work is of a highly skilled nature. They require a minimum of 5 years experience before they are considered competent to perform the Company's work. They do no work outside their own department and their contact with the other employees is limited to the receipt and delivery of equipment on which they work. They work in a room separate and apart from the other employees. The record discloses no previous history of collective bargaining at the plant.² Under the circumstances, including the fact that polishers have a substantial interest in a well-recognized craft and are, to a large extent, physically segregated from the other employees, we are of the opinion that the polishers as a group could properly function as a separate bargaining unit or as a part of a plant-wide unit.³ Accordingly, our determination of the appropriate unit or units will depend, in part, upon the desires of the employees themselves to be expressed in the elections hereinafter directed. If at such elections the employees of both groups set forth below select the C. I. O., they will thereby have indicated their desire to constitute a single bargaining unit; otherwise, they will have indicated their desire to constitute separate bargaining units.

We shall direct that separate elections by secret ballot⁴ be held among the employees in the voting groups listed below, excluding clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction:

1. All polishers employed in the Company's polishing department;
2. All remaining production and maintenance employees, including shippers, but excluding polishers employed in the Company's polishing department.

² The C. I. O. contends that the bargaining history at the Union Dental Co., a partnership owned and operated by two of the three partners who own and operate the Company herein, should be determinative of the appropriate unit because a merger of the two companies is contemplated. Because the Union Dental Co. is presently a separate and distinct entity and may or may not be merged with the Company in the future, no effective consideration can be given to its collective bargaining history in resolving the unit issue involved herein.

³ See *Matter of General Motors Corporation, Delco Products Division, Plant D*, 59 N. L. R. B. 1210, and cases cited therein.

⁴ The C. I. O. indicated that it did not desire to participate in an election among the polishers in the event a separate unit of such employees was found appropriate. However, inasmuch as our unit finding will await a determination of the desires of the employees themselves, we shall place the name of the C. I. O. on the ballot with leave to withdraw by notifying the Regional Director to that effect within five (5) days from the date of this Decision and Direction of Election.

DIRECTION OF ELECTIONS

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 Dascher Manufacturing Co., Philadelphia, Pennsylvania, elections 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 Fourth 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 voting groups defined 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, (1) to determine whether the employees described in group 1 in Section IV, above, desire to be represented by Metal Polishers, Buffers, Platers & Helpers International Union, Local No. 90, A. F. of L., or by Dental, Surgical & Allied Workers, L. I. U. No. 119, C. I. O. for the purposes of collective bargaining, or by neither; (2) to determine whether or not the employees described in group 2 of Section IV, above, desire to be represented by Dental, Surgical & Allied Workers, L. I. U. No. 119, C. I. O., for the purposes of collective bargaining.⁵

⁵ The request of the A. F. of L. and the C. I. O. that they be designated on the ballot otherwise than as hereinabove set forth is hereby referred to the Regional Director to whom the Board delegated discretionary authority in matters relating to the conduct of elections.