

IN THE MATTER OF AIR-WAY ELECTRIC APPLIANCE CORPORATION *and*
FOREMEN'S ASSOCIATION OF AMERICA (INDEPENDENT)

Case No. 8-R-1902.—Decided March 14, 1946

*Mr. J. H. Nuffer, and Welles, Kelsey, Fuller, Coburn & Harrington, by Mr. George D. Welles, of Toledo, Ohio, for the Company.
Mr. William Vallance, of Detroit, Mich., for the FAA.
Mr. Donald H. Frank, of counsel to the Board.*

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Foreman's Association of America (Independent), herein called the FAA, alleging that a question affecting commerce had arisen concerning the representation of employees of Air-Way Electric Appliance Corporation, Toledo, Ohio, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles W. Schneider, Trial Examiner. The hearing was held at Toledo, Ohio, on September 25 and 26, 1945. The Company appeared specially to contest the jurisdiction of the Board on the ground that the employees involved herein are not employees within the meaning of Section 2 (3) of the Act. The FAA entered a general appearance. All parties participated and 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 the dismissal of the petition upon grounds discussed in Section IV, *infra*. For the reasons stated therein the motion is hereby denied. The Company also moved that this proceeding be held in abeyance pending a decision by the Supreme Court of the United States on the status of supervisory employees under the Act. That 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 an opportunity to file briefs with the Board.

¹ The name of the Company appears herein as corrected on the record.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Air-Way Electric Appliance Corporation is a Delaware corporation engaged at its Toledo, Ohio, plant primarily in the manufacture of electrical appliances. The principal materials used in its manufacturing processes are aluminum, steel, brass, and copper. During the year 1944, of the materials used by the Company at the Toledo plant, over 40 percent, valued in excess of \$100,000, was shipped to it from points outside the State of Ohio. During that year, of the finished products manufactured at the Toledo plant, over 80 percent, valued in excess of \$1,000,000, was shipped to points outside the State of Ohio.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATION INVOLVED

Foreman's Association of America (Independent) is an unaffiliated labor organization admitting to membership supervisory employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the FAA as the exclusive bargaining representative of certain of the Company's employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the FAA represents a substantial number of employees in the unit hereinafter found appropriate.³

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

In its petition the FAA sought a unit of supervisory employees, including supervisors and instructors, up to but not including as-

² *Matter of Air-Way Electric Appliance Corporation*, 41 N. L. R. B. 1239.

³ The Field Examiner reported that the FAA submitted 33 application cards, 23 of which bore names of persons appearing on the Company's pay roll of August 2, 1945, which contained the names of 27 employees in the appropriate unit. The record reveals that at the time of the hearing there were 22 persons in the unit sought, due to a reduction in force resulting from the cancellation of war contracts.

sistant superintendents in the Company's production, maintenance, inspection, and power divisions. Because of facts revealed at the hearing, the FAA moved to amend its petition to describe a unit consisting of the Company's supervisors and foremen, both male and female, in its production, maintenance, and inspection department, but excluding instructors and the supervisory employees in the time-study, engineering, personnel, purchasing, drafting, and office departments, and all other employees. The motion, which was referred to the Board, is hereby granted.

The 18 foremen in the proposed unit are the supervisory employees immediately in charge of the production, maintenance, and inspection departments of the plant.⁴ They are responsible to the president and general manager, general works manager, plant superintendent, and production control manager.⁵ The foremen⁶ have under them, as assistants, the 4 supervisors, as well as from 5 to 40 rank and file employees each. A foreman receives, monthly, from the planning department production schedules from which he plans the work and manpower distribution of his department. When he deems it necessary, he requests additional personnel. His supervisory authority over the personnel in his department includes recommending discharges and changes in classification, handling grievances in their first stage, assigning his men to jobs within the department, disciplining them, arranging transfers to other departments, signing their leave applications, and requesting overtime when he deems it necessary. His recommendations and actions concerning hire, overtime, discharges, classification changes, transfers, and leaves require approval from above. In addition, foremen enforce the plant's safety rules, set up the factors for time-study tests, handle disposal of salvage and scrap, request machinery repair, check the quality of the work produced by their departments, experiment on improved methods of production within their departments, and requisition tools and fixtures. Supervisors⁷ instruct new employees, check the product, and report progress and inefficiencies to the foremen.

Foremen and supervisors are hourly paid, punch time clocks, have the same group insurance plan as do the rank and file employees, and perform manual work when necessary. At the supervisory meet-

⁴ Those foremen and supervisors not included are in either technical or clerical departments

⁵ There is also in the plant hierarchy a secretary-treasurer and assistant general manager with whom the foremen and supervisors do not come in contact

⁶ One foreman has a subordinate foreman under him, who is in actuality an assistant foreman. There are no employees with the title of assistant foremen in the plant.

⁷ At the time of the hearing, there was a single employee entitled "supervisor" in the plating and polishing department. The record reveals that this assignment was temporary, and that this employee was expected to return to his regular production position within 2 months thereafter. It is our intention to exclude that employee from the unit hereinafter found appropriate

ings, held irregularly, these employees hear reports from management on expected new business and the cancelation of contracts, and discuss problems relating to efficient production, such as the hour for opening the plant, stock and material shortages, and production schedules. These employees are urged to bring up problems and make suggestions at these meetings.

The Company makes no assertion concerning the composition of the proposed unit, but contends that (1) the unit is inappropriate because these employees are not "employees" within the meaning of the Act and that (2) even if they are employees, we should exercise our supposed discretionary power by declining to direct an election herein. We have considered these contentions in previous cases, concerning substantially similar employees, and have found them to be without merit.⁸ We have therefore denied the Company's motion to dismiss the petition upon those grounds.

The sole unique feature of this case is that the contract of Local No. 12, United Automobile Workers of America, CIO, covering generally, the Company's production and maintenance employees, contains a clause giving seniority rights to the foremen and supervisors under certain circumstances, if they are acceptable to the CIO. The Company contends that this clause places the foremen and supervisors in a position where, in advancing their self-interest, they must cater to their subordinates who are members of the CIO. Whether or not this is true, the contractual provision in question does not tend to show any lack of independence on the part of the FAA, and its present impact will not be increased tomorrow merely by reason of the foremen and supervisors joining that union. Nor is it relevant to our conclusion that the foremen and supervisors, as employees, are entitled to bargain collectively on their own behalf.

We find that all the Company's supervisors and foremen, both male and female, in its production, maintenance, and inspection departments, but excluding instructors and the supervisory employees in the time-study, engineering, personnel, purchasing, drafting, and office departments, and all other employees, 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 em-

⁸ *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997; *Matter of Simmons Company*, 65 N. L. R. B. 984; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294; *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298.

ployees 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 the Air-Way Electric Appliance Corporation, Toledo, Ohio, 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 Eighth 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 Foreman's Association of America (Independent), for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*,⁹ I am constrained to disagree with the majority opinion.

⁹ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.