

In the Matter of CLARK BROS. CO., INC. and UNITED AUTOMOBILE AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO

Case No. 3-R-1099.—Decided March 15, 1946

Messrs. Maurice F. Hanning, Thomas L. Moody, and James A. Hughes, all of Cleveland, Ohio, for the Company.

Mr. David Diamond and Mr. Peter J. Zanghi, both of Buffalo, N. Y., for the C. I. O.

Messrs. Paul Nickel and Harry Riding, both of Olean, N. Y., for the Association.

Mr. Warren H. Leland, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Clark Bros. Co., Inc., Olean, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cyril W. O'Gorman, Trial Examiner. The hearing was held at Olean, New York, on December 20, 1945. The Company, the C. I. O., and the Employees Association, Inc., of Clark Bros. Co., C. U. A., herein called the Association, 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 Company moved to dismiss the petition on the grounds that a contract with the Association bars this proceeding, and the limitations in the current Appropriations Act serve to enjoin further steps in this proceeding. The Trial Examiner reserved ruling on this motion for the Board. The motion is denied for reasons set forth in Section III, *infra*. The Trial Examiner's rulings made

at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Clark Bros. Co., a wholly owned affiliate of Dresser Industries, Inc., is a New York corporation maintaining its principal place of business at Olean, New York, where it is engaged in the manufacture, sale, and distribution of gas engines, compressors, and similar products.

Annual purchases of raw materials by the Company are valued in excess of \$1,000,000, of which approximately 10 percent is obtained from points located outside the State of New York. Annual sales of the Company's finished products are valued in excess of \$1,000,000, of which approximately 90 percent is shipped to points located outside the State of New York.

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

II. THE ORGANIZATIONS INVOLVED

United Automobile, Aircraft & Agricultural Implement Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Employees Association, Inc., of Clark Bros. Co., Inc., C. U. A., 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 C. I. O. as the exclusive bargaining representative of certain of its employees until the C. I. O. has been certified by the Board in an appropriate unit.

As a result of a consent election held in August 1943, in which both the C. I. O. and the Association participated, the Association was designated by the Regional Director for the Third Region as the collective bargaining representative of the employees of the Company. Thereafter, the Company entered into a contract with the Association. On December 20, 1944, the C. I. O. filed a petition seeking certification as the collective bargaining representative of the

Company's production and maintenance employees, and a consent election was held on January 19, 1945, in which the C. I. O., and the Association participated. Neither union obtained a majority of the votes cast and a run-off election was held on February 8, 1945. In this election the Association received a majority vote. However, on February 12, 1945, the C. I. O. protested the run-off election, and this Board, sustaining the objections, set aside the run-off election. On March 13, 1945, the C. I. O. notified both the Company and this Board, by letter, that it desired to withdraw its petition and, on the same date, filed charges alleging violation of Section 8 (1) of the National Labor Relations Act.¹ This letter also indicated that the C. I. O. did not relinquish its claim of representation, but it would not seek certification until after adjudication of the pending unfair labor practice charges.

On March 19, 1945, the Regional Director for the Third Region approved the C. I. O.'s request for withdrawal of the Petition and notified the Company that such withdrawal had been granted without prejudice. On March 22, 1945, the Company notified the Regional Director that unless the C. I. O. was certified as the collective bargaining representative of its employees within 5 days, it would rely upon the former certification and enter into a contract with the Association. The Regional Director, by letter dated March 31, 1945, replied that any such action taken by the Company would be entirely on its own responsibility. On April 16, 1945, the Company entered into a contract with the Association for a period of 1 year. On October 5, 1945, the C. I. O. filed the petition in this proceeding.

The Company pleads its contract of April 16, 1945, as a bar to this proceeding. Apart from all other considerations, we find that the agreement does not preclude a current determination of representatives, inasmuch as its anniversary date is less than 2 months from the present time.²

The Company also contends that the limitations in the Appropriations Act enjoins the present proceeding while the contract between the Company and the Association is in existence. But the limitations adverted to by the Company apply solely to complaint cases and not to representation proceedings.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁴

¹The C. I. O. has since filed a waiver of the right to protest any election which might be directed in this proceeding based on the subject matter of the pending unfair labor practice charges it brought against the Company (Case No. 3-C-775).

²See *Matter of Flintkote Company*, 55 N. L. R. B. 1442.

³See *Matter of Joseph Dyson & Sons, Inc.*, 60 N. L. R. B. 867.

⁴The Field Examiner reported that the C. I. O. submitted application cards bearing the names of 523 employees. The Association relies on its 1945 contract as evidence of its interest in this proceeding.

There are approximately 1,050 employees in the 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 parties are in general agreement that all production and maintenance employees of the Company, including production employees in the experimental department who are engaged in non-technical work, but excluding clerical employees in the main office; professional, experimental, chemical, and research employees; confidential employees; guards; time-study men; foremen; assistant foremen; and all other supervisory employees having authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute an appropriate unit. The C. I. O. seeks to exclude factory office employees and leadmen. However, both the Company and the Association seek the inclusion of these two categories, with the exception of certain leadmen who are hereinafter discussed.

Factory clerical employees: There are approximately 60 factory clerical employees, all of whom work in the factory building, which is physically separated from the main office and the personnel department.

Approximately half of these employees perform their work within the factory proper. They are, for the most part, shipping clerks, inventory clerks, stock chasers, and material clerks, and they frequently physically handle the products or material. They are supervised by the foremen of the shipping and receiving departments and are paid on an hourly basis. It is clear that they contribute substantially to the productive process, and we shall, accordingly, include them within the unit.

The remaining factory clerical employees are located in an office on the first floor of the factory building. Their duties consist of payroll computation, routine cost work, keeping production records, compilation of routine statistical information, and similar duties of a clerical nature. They are supervised by a factory office manager and are paid on an hourly basis, as contrasted to the weekly salary paid to main office clericals. Their hours of work, which differ from those of the main office employees, are the same as those of the workers in the factory. These employees have been represented by the Association since 1941. It is apparent that these factory clericals have interests more intimately related to those of the production and maintenance employees, than to those of the main office clerical workers. Accordingly, we shall include them in the unit.

Leadmen: The operations of the Company are departmentalized, with each department under the supervision of a foreman. Under the foremen the departments are broken up into groups and these groups receive their instructions from leadmen. Generally speaking, the leadmen do not possess supervisory powers. They are paid on an hourly basis and spend the greater portion of their time performing manual labor.

In certain departments, however, either because of the large number of employees in their group or because of long years of service with the Company, the leadmen are considered by the employees to be supervisory. Both the Company and the Association have, since 1941, excluded these leadmen from the unit underlying their dealings. The leadmen concerned are in the electrical maintenance department, maintenance department rod-gang, subassembly department night shift, paint department, and the core department day shift. The record discloses that leadmen in these departments have acted as substitutes for the foremen in their departments during the foremen's absence and that in at least one department (core department) the leadman was required to determine efficiency ratings which are used in considering wage increases. We shall exclude from the unit these particular leadmen, but shall include all others.

We find that all production and maintenance employees of the Company including production employees in the experimental department who are engaged in non-technical work; all factory clerical employees; and leadmen (excepting those specifically excluded), but excluding main office clerical employees, professional, experimental, chemical, and research employees; guards; time-study men; leadmen in the electrical maintenance department, maintenance department rod-gang, subassembly department night shift, core department day shift and the paint department; foremen; assistant foremen; 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.

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 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 Clark Bros. Co., Inc., Olean, 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 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 United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or by Employees Association, Inc., of Clark Bros. Co., Inc., C. U. A., for the purposes of collective bargaining, or by neither.