

In the Matter of GENERAL CABLE CORPORATION and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L., LOCAL 334

Case No. 3-R-971.—Decided April 19, 1946

Messrs. A. Leon Ferguson and Milton G. Johnson, of New York City, for the Company.

Mr. Jerome Winterhalt, of Rome, N. Y., and Mr. Thaddeus Naughton, of Malverne, N. Y., for the Union.

Mr. Donald H. Frank, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Electrical Workers, A. F. of L., Local 334, herein called the Union,¹ alleging that a question affecting commerce had arisen concerning the representation of employees of General Cable Corporation, Rome, 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. The hearing was held at Rome, New York, on September 11, 12, and 13, 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 the dismissal of the petition. For the reasons stated in Section IV, *infra*, the 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

General Cable Corporation is a New Jersey corporation, engaged in the manufacture of electrical cable and wire at its Rome, New York,

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

² The Cable Guild Independent Union, herein called the Cable Guild, and Interstate Copper & Brass Workers Union were served with Notice of Hearing, but failed to appear or participate.

plant, the sole operation of the Company involved in this proceeding. During the year 1944, the Company used in its manufacturing operations at its Rome plant raw materials valued in excess of \$1,000,000, of which more than 50 percent was shipped to the Rome plant from points outside the State of New York. During that year, the Rome plant produced finished products valued in excess of \$1,000,000, of which more than 50 percent was shipped to points outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local 334, affiliated with the American Federation of Labor, is a labor organization admitting to membership supervisory 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 the Company's supervisory employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit sought.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

The Union seeks a unit of the Company's supervisory employees in the production, maintenance, plant-protection, inspection, and laboratory sections⁴ of the Rome plant, including assistant division superintendents, general foremen, foremen, and supervisors,⁵ but excluding the plant manager, assistant plant manager, section heads, assistant section heads, division superintendents, and all other employees. In addition to its contentions concerning the composition of the proposed unit, the Company asserts that the petition should be dismissed on the ground (1) that supervisory employees are not "employees" within the mean-

³ The Field Examiner reported that the Union submitted 143 application cards, and that there are approximately 225 employees in the unit sought.

⁴ These units of the plant organization were variously referred to in the record as divisions and departments. They are referred to herein as "sections" in order to distinguish them from the divisions and departments under them. The Company refers to the maintenance section as "Engineering," to the production section as "Manufacturing," and to the laboratory section as "Technical."

⁵ In its petition, the Union sought to include assistant foremen. There are no longer any assistant foremen in this plant.

ing of the Act, (2) that supervisory employees do not constitute an appropriate unit, and (3) that the Union may not represent these employees because it is a local of an international organization, capable of representing the Company's rank and file employees.⁶ In view of our Decisions in *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*,⁷ and other recent cases,⁸ we find no merit in the Company's contentions and we have therefore denied the Company's motion to dismiss the petition.

There remains the problem of the proper grouping of the supervisory employees sought to be represented. The Company is a large corporation, many of the decisions concerning which are made at company headquarters. The Rome plant is headed by a plant manager and an assistant plant manager under whom there are 10 section heads.⁹ A few of these section heads also have assistants. Some of the section heads are in charge of sections which are divided into divisions. These are headed by 20 division superintendents. Under the division superintendents come the following employees the Union seeks to represent: approximately 25 assistant division superintendents, 31 general foremen, 80 foremen, and 63 supervisors. The Company contends that the assistant division superintendents and the supervisors should be excluded from the proposed unit. The Company would exclude the assistant division superintendents on the ground that they are on the same supervisory level as the division superintendents, whom the Union would exclude. The former category of employees work the night shifts while the latter work days. Although the assistants appear to be responsible to their division superintendents, they perform the same functions on their shifts. We are of the opinion that their interests are more closely linked to their division superintendents than to the general foremen beneath them, and we shall therefore exclude them from the unit hereinafter found appropriate.¹⁰

The Company would exclude the supervisors on the ground that they are included in the rank and file units, as illustrated by the Cable

⁶ Production and maintenance employees at the Rome plant were represented by the Cable Guild at the time of the hearing. As the result of a consent election in January 1946, in Case No. 3-R-1106, the production and maintenance employees are now represented by United Electrical, Radio and Machine Workers of America, C I O The I. B. E. W., but not this local, sought to represent these workers but was defeated in that election.

⁷ 66 N. L. R. B. 386.

⁸ *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 289; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294.

⁹ At the hearing, no organizational chart of the Company's activities or hierarchy were submitted, but the parties agreed that, should the Company thereafter submit such charts, they could be admitted into evidence. Those charts have since been received, and are hereby made a part of the record.

¹⁰ *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division, supra*; *Matter of Simmons Company*, 65 N. L. R. B. 984; cf. *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997.

Guild's contracts. We note that the Cable Guild did not intervene in this proceeding to protect any interest it may have claimed in these employees. The 1945 Cable Guild contract covering production and maintenance employees read, "excluding . . . assistant foremen, foremen, and all others in a capacity of equal or greater supervisory authority." Many of the supervisors, the record shows, received that designation, without any change in authority or duties, when the designation "assistant foremen" was abolished. We are of the opinion, therefore, that supervisors are not included in the unit of rank and file employees and properly belong in units of supervisory employees.¹¹ We shall include them in the unit hereinafter found appropriate.

The Union originally requested a unit of the supervisory employees in the production section, but at the hearing amended its petition, over the objection of the Company, to include in the unit the supervisory employees in the maintenance, inspection, laboratory, and plant-protection sections.¹² We have considered the question of the appropriate grouping of supervisory employees in several recent cases, and have concluded that the best results are to be achieved by following, generally, the pattern established by the Board for units of rank and file employees.¹³ We shall, therefore, exclude from the unit hereinafter found appropriate the laboratory and plant protection supervisory personnel.¹⁴ Moreover, although the record does not detail specifically the status of inspectors or the duties of their supervisors in this plant, it reveals that the inspectors are separately bargained for, and we shall therefore exclude their supervisors without prejudice to a later reconsideration of this determination.¹⁵

We find that all the Company's supervisory employees in the production and maintenance sections of the Rome plant, including general foremen, foremen, and supervisors, but excluding the plant manager, assistant plant manager, section heads, assistant section heads, division superintendents, assistant division superintendents, and all other em-

¹¹ In the afore-mentioned consent election in Case No 3-R-1106, the Regional Director excluded supervisors from the production and maintenance unit.

¹² The record does not reveal, however, whether the Union desires separate elections among those supervisory employees who we hereinafter determine may not appropriately be included in the unit of production and maintenance supervisory employees.

¹³ *Matter of Westinghouse Electric Corporation (East Springfield Works)*, 66 N L R B 1297, *Matter of Federal-Mogul Corporation*, 66 N L R B 532, *Matter of The Midland Steel Products Company, Parish & Bingham Division*, *supra*.

¹⁴ The Cable Guild was designated by the Board as the representative of production and maintenance, inspection, plant-protection, and laboratory units of the Company's employees as a result of a series of consent elections and cross checks conducted between September 1941 and June 1944. In 1945, the last Cable Guild contract, covering "all hourly rated and salary employees" specifically excluded guards. The contract does not reveal whether or not laboratory workers have been contracted for separately, but we shall nevertheless exclude their supervisors from the unit found appropriate.

¹⁵ We note additionally, that the Decision in *Matter of General Cable Corporation*, 62 N L R B 437, shows that the Company has a special policy of segregating its inspectors from its other employees.

ployees, 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.

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 General Cable Corporation, Rome, 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 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 International Brotherhood of Electrical Workers, A. F. of L., Local 334, for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinions in *Matter of Packard Motor Car Company*,¹⁶ and *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*,¹⁷ I am constrained to disagree with the majority opinion.

¹⁶ 61 N. L. R. B. 4

¹⁷ 66 N. L. R. B. 386