

In the Matter of ELECTRIC SPRAYIT COMPANY AND MOE BRIDGES CORPORATION and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (CIO), AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL)

Case No. 13-RE-36.—Decided April 25, 1946

Miller, Mack & Fairchild, by *Mr. James Poole*, of Milwaukee, Wis., for the Company.

Padway & Goldberg, by *Mr. A. G. Goldberg*, of Milwaukee, Wis., *Mr. Cliff Wetchen*, of La Crosse, Wis., and *Mr. E. J. Fransway*, of Milwaukee, Wis., for the AFL.

Mr. David B. Rothstein, of Chicago, Ill., *Mr. David Scribner*, of New York City, and *Mr. Philip H. Smith*, of Milwaukee, Wis., for the CIO.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Electric Sprayit Company and Moe Bridges Corporation, Sheboygan, Wisconsin, herein collectively called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Leon Rosell, Trial Examiner. The hearing was held at Sheboygan, Wisconsin, on January 28, 1946. The Company, United Electrical, Radio & Machine Workers of America (CIO), herein called the CIO, and International Brotherhood of Electrical Workers (AFL), herein called the AFL, appeared and participated.

At the hearing, the CIO moved to dismiss the petition. For reasons set forth in Section III, the motion is hereby denied. 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 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

Electric Sprayit Company is a Delaware corporation, engaged in the manufacture of paint spraying equipment. Moe Bridges Corporation is a Wisconsin corporation, engaged in the manufacture of electric light fixtures. Both companies maintain their plants and offices in the same buildings at Sheboygan, Wisconsin. Moe Bridges Corporation is a wholly owned subsidiary of the Electric Sprayit Company, with both companies having interlocking directors, some common officers, and identical supervisory personnel. Electric Sprayit Company and Moe Bridges Corporation, whose plants are involved in this proceeding, stipulated that for the purposes of this proceeding they are to be treated as a single employer.¹

During 1945, the Company purchased raw materials valued at approximately \$2,000,000, 80 percent of which was transported from points outside the State of Wisconsin. During the same period the Company sold finished products, valued at approximately \$3,200,000, 98 percent of which was shipped to points outside the State of Wisconsin.

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

II. THE ORGANIZATIONS INVOLVED

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

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

III. THE QUESTION CONCERNING REPRESENTATION

From 1937 until May 1, 1945, the Company's production and maintenance employees were covered by closed-shop agreements between the Company and the A. F. L. Until 1942, while the Company was manufacturing civilian goods, it employed only about 170 persons.

On May 31, 1945, when the Company was engaged in war production and had greatly enlarged its working force, the CIO, the AFL, and the Company entered into an Agreement for a Consent Election,

¹ As noted above, we shall refer to Electric Sprayit Company and Moe Bridges Corporation as the "Company."

covering approximately 550 production and maintenance employees at the Company's Sheboygan plants. Pursuant to this agreement, the Board conducted an election on June 12, 1945, in which the CIO was selected as bargaining representative of the employees by a vote of 258 to 227 for the AFL. About a month later, in initiating its reconversion plans, the Company discharged approximately 110 employees, leaving a complement of 440. On July 21, 1945, 300 of the 440 remaining employees addressed a petition to the Company, protesting the conduct of the Consent Election and requesting it to recognize only the AFL. Pursuant to this request, the Company filed the petition in the present proceedings on July 23, 1945. On July 27, 1945, the Regional Director designated the CIO as bargaining representative of the Company's employees. Less than 3 weeks thereafter, on V-J day, the Company laid off 300 more employees, leaving a total of only 125. As of the time of the hearing it had 169 employees—the same number as before its tremendous wartime expansion—all engaged again in civilian production.*

Because of the employees' petition and the circumstances outlined hereafter the Company has refrained from entering into bargaining relations with the C. I. O. since the date of that labor organization's designation. The Company and the AFL contend, in effect, that reconversion subsequent to the consent election has necessitated a drastic reduction of personnel and caused material changes in the Company's operations and processes, resulting in a representation question among employees now working in the plant. The CIO, on the other hand, contends that no question concerning representation has arisen because less than a year has elapsed since the CIO was designated by the Board's Regional Director. In the ordinary situation we would be no less willing than our dissenting colleague to agree with the CIO's contention, especially as this petition originates with an employer that has not bargained under a designation less than 1 year old.² But this is no ordinary situation, and the mistaken suggestion in the dissent that we are departing from prior doctrine cannot convert it into one.

The record discloses that the change-over from war to civilian production after the cessation of hostilities resulted in a complete change in the Company's operations and processes. During the war, the Company manufactured complete electric motors, generators, hydraulic units for airplanes and gear mechanisms. Machinery, valued in excess

² We pay no more heed to the employees' petition of July 21, 1945, than we would in the usual case. Nor is our present action on the employer's petition to be taken as meaning that we would have acted similarly if the case had come before us for decision shortly after it was filed during that same month. It is the supervening events, following reconversion and the decline in employment that flowed from the victory over Japan, that matter. They are all recited in the record that was taken in January 1946 and we, at least, do not choose to blind ourselves to these facts.

of \$400,000, of a type not used by the Company in civilian production, was loaned to the Company by various government agencies for manufacture of these wartime productions. The Company was compelled, because of the high type precision necessary for the manufacturing of the war products, to hire persons with skills not previously or presently required for its civilian products. We note that the Company has made substantial progress in the reconversion of its plant for renewed civilian production of paint spraying equipment and lighting fixtures. This type of manufacturing eliminates the need for approximately 99 percent of the machinery used for wartime production. High precision is no longer necessary, and, apparently, the highest skilled employees required for civilian production are polishers. Reconversion has resulted in a 70-percent reduction in personnel.³

We stated in the *Moller* case,⁴ as we do here, that when it is demonstrated that an employers' personnel has been cut back to its prewar size, by reconversion from war to peacetime production, and when this, together with other appropriate circumstances, may warrant a redetermination of representatives, or of the appropriate bargaining unit, a new petition for investigation and certification of a collective bargaining representative may be filed with the Board.⁵ Mere reduction in the size of the unit, however, is not sufficient. There must be "other appropriate circumstances," such as a material change in the Company's operations or processes, in addition to a contraction of the unit. Two of the necessary prerequisites are present in the instant case.

A third factor, which may well distinguish this case from others which preceded or may follow it, is also present here. The AFL had long been the bargaining agent of the employees until the 1945 election. It had been the bargaining agent of those previously engaged in civilian production. At least 360 of the 556 participants in that election had been in the Company's employ less than 1 year; another 127 had worked there less than 2 years. They comprised the Company's wartime emergency complement. It is apparent from the record that the CIO's strength lay among these employees. The postwar lay-offs were made by this Company on a seniority basis. These remaining today are among the older employees, at least 92 of whom, as of January 1946, had been in the Company's employ for more than 2 years. The CIO application cards, as of that date, number only 25 out of the then 169 employees. Conditions have changed so materially in this

³ The Company reduced its personnel from 556 as of the date of the consent election, to 169 at the time of the hearing.

⁴ See *Matter of M P Moller, Inc*, 56 N L R B 16

⁵ Indeed, in appearing before the House Appropriations Committee late in 1945, the Board unanimously expressed the view that such problems would require special attention during the current year.

particular plant that we believe that the very industrial peace and stability of which our colleague speaks can only be assured by affording the Company's present employees an opportunity to express a current choice. We do not know, and care less, what that choice may be. We say only that the employees and the employer are entitled to an opportunity to discover what it is.

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

We find, in accordance with the stipulation of the parties, that all of the Company's production and maintenance employees at Sheboygan, Wisconsin, including working foremen and group leaders,⁶ but excluding all executive officers and clerical employees, and all or 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 purpose 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 Electric Sprayit Company and Moe Bridges Corporation, Sheboygan, Wisconsin, 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 Thirteenth Region, acting in this matter as agent for the National Labor

⁶ The record indicates that these employees do not exercise supervisory authority within the Board's customary definition

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 Electrical, Radio & Machine Workers of America (CIO), or by International Brotherhood of Electrical Workers (AFL), for the purposes of collective bargaining, or by neither.

Mr. JOHN M. HOUSTON, dissenting:

My colleagues have cancelled the vitality of the majority designation of the CIO upon a petition filed by the employer almost simultaneously with its issuance. Their holding derogates from fundamental decisional policy in representation cases, and advances a serious impediment to effective administration of our function under Section 10 (a) of the Act.

On June 12, 1945, the CIO defeated the AFL union in a consent election conducted under the auspices of our Regional Director. After overruling objections to the election, the Regional Director designated the CIO as majority representative on July 27, 1945. But on July 21, 1945, the employer received a document signed by employees dissatisfied with the outcome of the election. Upon the basis of this demand to disregard the results of the balloting, the employer, on July 23, 1945, filed his petition and refused to recognize the CIO. The Regional Director, upon investigation, dismissed this petition, but his ruling was reversed by the present majority of the Board and a hearing was conducted on the petition.⁷ No bargaining, of course, has ensued.

I have always considered it axiomatic that a designation as majority representative or a certification as such following an election victory entailed, as its chief consequence, the right to at least 1 year within which the majority representative, through collective bargaining, might seek to obtain a comprehensive contract governing the relationship of the employees in the unit with their employer. The vigor of the certificate or designation has been protected by this Board against the most variegated type of attack during its normal life span. We have dismissed, as premature, petitions filed by rival labor organiza-

⁷ My dissent from this action is recorded.

tions during the year following the certificate. We have invoked the section of 8 (5) of the Act against employers who have refused to bargain with the majority representative during the year following its certification, and we have rejected innumerable arguments both in representation proceedings and in complaint cases even though they were predicated upon the most diverse factual contexts. Our rationale in all these situations has been that effective administration of the Act must depend upon the strongest measure of stability in relationships once established and guaranteed by the invocation of our election process. As I have said, we have rejected many arguments fashioned, often quite ingeniously, to impinge upon this fundamental concept. But the factual context before us in this case is unique, for here no rival organization filed a petition, nor was a petition filed, as might reasonably be anticipated from past experience, toward the end of a year after certification or the terminal date of an existing contract. In this case it is the employer by his own petition, filed even before the designation issued, who has interposed the barrier. And the justification for his petition lies in the dissatisfaction of a group of employees who, only shortly before, had participated in a free election resulting in a definitive choice of the CIO as the majority representative. Certainly such conduct would have given us little pause were we called upon to decide whether the employer violated Section 8 (5). I can conceive of no simpler method by which an employer may escape the duty to bargain were we to publish our willingness to accept employer petitions in such circumstances.

The majority of the Board, however, has entertained this petition and now has directed an election. Its theory is that because a reorganization of the employer's business has occurred, with a consequent decrease in personnel, and change-over in operation due to reconversion, it is necessary that a new opportunity be afforded the employees to choose collective bargaining representatives. The majority points to the *M. P. Moller* case as precedent for its holding. I am quite conscious of the fact that reconversion creates problems with respect to collective bargaining. And I am firmly convinced that the reconversion period places a great test upon the collective bargaining process. The success with which reconversion problems may be met by collective bargaining, however, is very largely dependent, in my view, upon a secure continuity of relationship between representatives of employees and the employer. Once such a relationship has been established validly by resort to the procedures designed under the Act, we should be loathe to upset them. And we should refuse flatly to do so when such an attempt is made, as here, flagrantly in disregard of well-established practice. It is of no little significance in this respect that the relationship created by the designation of the CIO was

attacked by the employer *before* and not *after* the reconversion problem arose. Entertainment of this obviously premature petition has the net effect, therefore, of having obstructed the bargaining program of the majority representative before reconversion and to eliminate that representative after reconversion. No foresight is necessary to imagine the chaos in such circumstances.

The *Moller* case does not provide precedent for the decision of the majority here. In that case we were confronted with no problem calling for the application of any rule of protection of our certificate; there was none. Our dictum in that case envisaged a completely different set of facts than those before us. Had we been called upon to balance equities as between the right of a newly certified or designated agent to bargain concerning reconversion matters, against the propriety of entertaining an employer petition filed before a reconversion problem existed, we would have resolved the issue, I am certain, in support of our certificate.

The decision of the majority today has placed an obstruction in the path of orderly administration of collective bargaining relationships confirmed by this Board, and I must, therefore, dissent from the action of my colleagues in entertaining this petition.