

In the Matter of ALLIS-CHALMERS MANUFACTURING COMPANY, LA PORTE WORKS and UNITED FARM EQUIPMENT AND METAL WORKERS OF AMERICA, C. I. O.

In the Matter of ALLIS-CHALMERS MANUFACTURING COMPANY, LA PORTE WORKS and UNITED FARM EQUIPMENT AND METAL WORKERS OF AMERICA, LOCAL NO. 119, C. I. O.

Cases Nos. 13-R-2922 and 13-R-3033, respectively.—Decided May 7, 1946

*Mr. W. J. McGowan*, of Milwaukee, Wis., and *Mr. H. W. Lindsay*, of La Porte, Ind., for the Company.

*Meyers & Meyers*, by *Messrs. Ben Meyers* and *H. E. Baker*, both of Chicago, Ill., and *Richard Marhanka*, of La Porte, Ind., for the International and Local 119.

*Mr. Jerome J. Dick*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon amended petitions duly filed by United Farm Equipment and Metal Workers of America, C. I. O., herein called the International, and United Farm Equipment and Metal Workers of America, Local No. 119, C. I. O., herein called Local 119, alleging that questions affecting commerce had arisen concerning the representation of employees of Allis-Chalmers Manufacturing Company, La Porte Works, La Porte, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Benjamin B. Salvaty, Jr., Trial Examiner. The hearings were held at La Porte, Indiana, on June 5, 1945, and February 19, 1946.<sup>1</sup> The Company, the International, and Local 119 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 that the petition in Case No. 13-R-2922, involving the

<sup>1</sup> On January 18, 1946, the Board ordered that the record be reopened and on February 19, 1946, an additional hearing was held.

Company's watchmen, be dismissed. For the reasons which appear in Sections III and IV, below, the motion is denied. 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

Allis-Chalmers Manufacturing Company is a Delaware corporation with its principal office and place of business at West Allis, Wisconsin. It is engaged in the manufacture of machinery of various types and maintains manufacturing plants throughout the country. The Company's La Porte, Indiana, plant is solely involved in this proceeding and, at this plant, the Company is engaged in the manufacture of both harvesting and war equipment. The La Porte plant annually uses raw materials consisting of wood, steel, and rubber, and numerous other miscellaneous articles, exceeding \$10,000,000 in value, approximately 80 percent of which is shipped to the plant from points outside the State of Indiana. The La Porte plant's annual sales of finished products exceed \$18,000,000, 95 percent of which is shipped to points outside the State of Indiana.

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

#### II. THE ORGANIZATIONS INVOLVED

United Farm Equipment and Metal Workers of America, and its Local No. 119, are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

#### III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to Local 119 and the International as the exclusive bargaining representatives of its matrons and watchmen, respectively, until these organizations have been certified by the Board in appropriate units.

In its motion to dismiss the International's petition in Case No. 13-R-2922, relating to its watchmen, the Company argues that under the doctrine enunciated in the *Briggs Indiana* case,<sup>2</sup> the presently existing April 11, 1944, extension agreement between Local 119 and the Company bars the International from seeking to represent the

<sup>2</sup> *Matter of Briggs Indiana Corporation*, 63 N. L. R. B. 1270

watchmen. This extension agreement provides that the terms of the expired 1943-1944 contract between the Company and Local 119, covering the La Porte plant's production and maintenance employees, shall remain in effect until superseded by a new contract. The following terms of the extended 1943-1944 contract are relevant:

**B. Coverage of Agreement**

3. This agreement applies only to hourly production and maintenance employees of the La Porte Works, exclusive of supervisory employees, and those individuals in the following classification.

1. Superintendents and general foremen;
2. Foremen and assistant foremen;
3. Inspectors (but not checkers);
4. Time-study men;
5. Timekeepers but not (shop clerks);
6. Apprentices;
7. Graduate Student Apprentices;
8. *Watchmen (full-time)*;
9. Salaried employees;

and all other employees who act directly or indirectly in the interests of the Company (within the meaning of such quoted phrase in the National Labor Relations Act) as already determined by the National Labor Relations Board.

4. *The employees in the above designated classes shall be considered a part of the management group of the Company and, accordingly, the Union disclaims any jurisdiction of them (or their successors in their respective classifications) and the right to accept them into membership in the Union.*

5. *But nothing contained in this article shall prevent the Union from obtaining judicial determination as to the legal correctness of the exclusion of any of the above classified employees from the coverage of this agreement.* (Emphasis supplied.)

In the *Briggs Indiana* case, a majority of the Board, reversing previous decisions, declined to make the election machinery of the Act available to a local union seeking to represent plant-protection employees, where the local union's parent body had agreed, in a recent short term collective bargaining contract with the same employer, that it would not accept the employer's plant-protection employees as members. Although clause 4 of the 1943-1944 contract is similar to the provision considered by the Board in the *Briggs Indiana* case, clause 5 of the contract must be read together with this restrictive language. When both clauses are so read together, it would appear that the contracting parties intended that "the Union" should have

the right to a judicial determination as to whether or not employees excluded from the coverage of the agreement are "a part of the management group of the Company," and if found not to be identified with management, "the Union" could represent them. Thus, by filing the petition in Case No. 13-R-2922, a proceeding in which the managerial status of watchmen is placed in issue, the International was within its rights. Since, as hereinafter found, these workers are not identified with management, we perceive no reason to dismiss this petition.<sup>3</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the International and Local 119 each represents a substantial number of employees among the Company's watchmen and matrons, respectively.<sup>4</sup>

We find that questions affecting commerce have 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

As noted above, the Company and Local 119 are bound by a written agreement covering all the production and maintenance employees in the La Porte plant. Local 119 now seeks to enlarge the scope of its present bargaining unit by adding thereto the La Porte plant's matrons. The Company has no objection to the expanded unit, if a majority of the matrons select Local 119 in an election by secret ballot. The International also seeks to enlarge the scope of the present production and maintenance grouping by including therein the La Porte plant's watchmen, excluding the captain and sergeants.<sup>5</sup> In the alternative, it seeks to have these workers established as a separate bargaining unit. Opposing the merger of watchmen with production and maintenance employees or the establishment of a separate unit of watchmen, the Company maintains that watchmen are managerial per-

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<sup>3</sup> Member Houston concurs in the conclusion herein that the petition in Case No. 13-R-2922 should not be dismissed under the *Briggs Indiana* doctrine. In view of his dissenting opinion in that case, however, wherein he stated that any agreement between a labor organization and an employer which might be construed to limit the right of employees to select collective bargaining representatives, was in derogation of the Act and therefore invalid, he finds it unnecessary either to agree or disagree with the rationale adopted in the decision in the instant case disposing of the Company's contention in this connection.

<sup>4</sup> The Trial Examiner reported that Local 119 submitted three cards bearing the names of matrons listed on the Company's pay roll of April 6, 1945. At that time there were five matrons in the Company's employ; however, at the time of the second hearing there were only two matrons in the Company's employ.

The International submitted 17 cards bearing the names of watchmen listed on the Company's pay roll of April 6, 1945. At that time there were 22 watchmen in the alleged appropriate unit, however, at the time of the second hearing there were 18 watchmen in the Company's employ.

<sup>5</sup> The parties agree that the captain and sergeants, who are carried on the Company's pay roll as foreman and assistant foremen, respectively, are supervisory employees.

sonnel and are not "employees" within the meaning of the Act, and that finding them to be a separate unit or including them in the more comprehensive unit would not effectuate the policies of the Act.

The watchmen constitute a well-organized plant-protection force consisting of 18 guards under a deputized captain and 2 deputized sergeants. They stand watch at plant gates and patrol the plant. All the guards are uniformed, but are neither militarized<sup>6</sup> nor deputized. Their collective functions are to deny unauthorized persons and vehicles access to the Company's plant, to prevent materials or articles not properly cleared from being removed from the plant, and to make reports with respect to the time employees enter or leave the plant. In addition, it is incumbent upon them to report infractions of the Company's rules to the violators' supervisors. However, they have no authority to discipline an employee who violates any rule.

The Company asserts that the watchmen are direct representatives of management, and on this premise, urges that they cannot be deemed to be "employees" within the meaning of the Act. We find no warrant in the record for the conclusion that watchmen are identified with management. They do not formulate nor determine the Company's labor relations policy. Their functions are unrelated to the production process and they neither assign nor direct the work of other employees. As respects other employees, guards are merely monitors and not managerial employees.<sup>7</sup> Even assuming *arguendo* that the watchmen are in some manner identified with management, in their own relations with the Company they are, nevertheless, "employees" within the meaning of the Act.<sup>8</sup>

We are persuaded, however, that the watchmen are monitorial employees. As such, we shall place them in a separate unit of their own. In consonance with our holding in recent cases,<sup>9</sup> we are constrained to reject the Company's contention that a separate unit of watchmen will not effectuate the policies of the Act.

We find that all watchmen at the Company's La Porte, Indiana, plant, excluding the captain, sergeants, 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.

The matrons' principal duty consists of taking care of the female employees' restrooms. It is clear that the matrons are not moni-

<sup>6</sup> The watchmen were demilitarized on August 14, 1945.

<sup>7</sup> See *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892; *Matter of The Cudahy Packing Company*, 67 N. L. R. B. 150.

<sup>8</sup> See *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386

<sup>9</sup> See *Matter of Bethlehem Steel Company*, *supra*; *Matter of The Cudahy Packing Company*, *supra*; *Matter of Allegheny Ludlum Steel Corporation*, 64 N. L. R. B. 1284.

torial employees. They may therefore be consolidated in a single unit with the production and maintenance employees. We shall direct an election among them to ascertain their desires as to whether or not they wish to be merged into the existing unit represented by Local 119.

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the watchmen's unit herein found appropriate and among the employees in the following voting group, 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:

All matrons at the Company's La Porte, Indiana, plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

If a majority of the matrons in the above voting group vote for Local 119, they will be taken to have indicated a desire to be bargained for as part of the production and maintenance unit now represented by that organization.

#### 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 Allis-Chalmers Manufacturing Company, La Porte Works, La Porte, Indiana, 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 Thirteenth 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 following employees who were employed by the Company 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 elections:

(1) All watchmen in the appropriate unit set forth in Section III, above, to determine whether or not they desire to be represented by United Farm Equipment and Metal Workers of America, C. I. O., for the purposes of collective bargaining.

(2) All matrons in the voting group set forth in Section III, above, to determine whether or not they desire to be represented by United Farm Equipment and Metal Workers of America, Local No. 119, C. I. O., for the purposes of collective bargaining.