

In the Matter of S. T. JOHNSON COMPANY and UNITED STEELWORKERS
OF AMERICA, CIO

Case No. 20-R-1608.—Decided May 10, 1946

*Hardin, Rank, Meltzer and Fletcher, by Mr. J. Marcus Hardin, of
Oakland, Calif., for the Company.*

Mr. Joseph Angelo, of Oakland, Calif., for the Union.

Mr. F. G. Dunn, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of S. T. Johnson Company, Oakland, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Daniel J. Harrington, Trial Examiner. The hearing was held at San Francisco, California, on April 9, 1946. The Company and the Union 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. 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

The Company is a Delaware corporation having its principal office and place of business at Oakland, California, where it is engaged in the manufacture and sale of oil burners and the distribution of fuel oil. During the period from March 1945 to December 1945, inclusive, the total sales of the Company at its Oakland, California, plant amounted to more than \$632,425, of which amount approximately 72

percent represented sales to customers outside the State of California and to the United States Government.

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

II. THE ORGANIZATION INVOLVED

United Steelworkers of America is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership 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 its office and clerical employees until the Union has been certified by the Board in an appropriate unit.

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 hereinafter found appropriate.¹

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 agreement that a unit composed of all office and clerical employees, excluding the executive secretary and auditor, the chief engineer, and the president's son, D. E. Johnson, is appropriate. However, they disagree as to the inclusion or exclusion of the following individuals:

Barbara Walts is listed as bookkeeper-accounts payable. Although she has been with the Company for 15 years and apparently carries more responsibility than other employees in her department, she does not have the power to effectively recommend a change in status of the other bookkeepers. We shall include her in the unit.

Mae Taber is confidential secretary to the president of the Company. She has been with the Company for 20 years. Inasmuch as she acts in a confidential capacity to a person having "managerial" functions in the field of labor relations,² we shall exclude her from the unit.

E. E. Jensen was a former field salesman who is now acting as assistant to the president of the Company. In this capacity, he answers correspondence and quotes prices. The Company intends to use

¹The Field Examiner reported that the Union had submitted 7 membership cards, and that there were approximately 10 employees in the appropriate unit

²*Matter of Ford Motor Company (Chicago Branch)*, 66 N L R B 1317

him in the future as a field engineer and salesman. Due to the diversity of duties and interests between him and the clerical employees, we shall exclude him from the unit.

E. Reed Cook is listed as assistant purchasing agent. The record shows that he may make minor purchases on his own initiative, but must secure approval from the vice president and general manager for purchases of any substantial amount. He has no supervisory authority. We shall include him in the unit.

Elizabeth C. Gilliland is the secretary to the vice president and general manager, who is in direct charge of labor relations. Inasmuch as she is employed in a confidential capacity, we shall exclude her from the unit.

Shirley M. Williamson is secretary to the chief engineer. She handles all correspondence of the chief engineer and in addition handles advertising and mimeographs price lists. Although the Company contends that her duties are similar to the secretaries to the president and vice president, the record shows that this employee is not acting in a confidential capacity to a person exercising managerial functions in the field of labor relations. We shall include her in the unit.

Sheldon Doolittle: This employee was hired by the Company to make time and motion studies in order to better judge the cost of manufacturing its product. He is not in a supervisory capacity nor does it appear that he sets rates or standards for wages. The ability to make time studies requires special technical knowledge and skill that can only be acquired through extensive training and experience. By reason of these specialized duties, the interests of the time-study man are diverse from those of clerical employees. We shall therefore exclude him from the unit.

We find that all office and clerical employees,³ including the bookkeeper-accounts payable, the assistant purchasing agent, the secretary to the chief engineer, but excluding the executive secretary and auditor, the chief engineer, the secretary to the president, the secretary to the vice president and general manager, the time and motion study man, 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

³ Excluding E. E. Jensen and D. E. Johnson, son of the Company's president.

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 S. T. Johnson Company, Oakland, California, 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 Twentieth 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 or not they desire to be represented by United Steelworkers of America, CIO.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.