

In the Matter of WICACO MACHINE CORPORATION, EMPLOYER and
UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO,
PETITIONER

Case No. 4-R-2148.—Decided July 19, 1946

Mr. Herman Lazarus, of Philadelphia, Pa., for the Board.

Mr. Geoffrey J. Cunniff, of Philadelphia, Pa., for the Employer.

Mr. Saul C. Waldbaum, of Philadelphia, Pa., for the Petitioner.

Mr. Leonard Michael Proper, by *Mr. James L. Price*, of Philadelphia, Pa., for the Committee.

Mr. Herbert J. Nester, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Philadelphia, Pennsylvania, on July 3, 1946, before Arthur Leff, Trial Examiner. 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 National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Wicaco Machine Corporation, a Pennsylvania corporation with offices and plant located at Philadelphia, Pennsylvania, is engaged in the manufacture and sale of textile machine parts. During the year immediately preceding July 1, 1946, the Employer purchased raw materials consisting of bar steel, brass, aluminum, and cast iron valued at in excess of \$100,000, approximately 5 percent of which was shipped to the Employer's plant from points outside the Commonwealth of Pennsylvania. During the same period, finished products manufactured and sold by the Employer were valued at in excess of \$200,000, approximately 60 percent of which was shipped to points outside the Commonwealth of Pennsylvania.

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

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

Wicaco Employees' Committee is an unaffiliated labor organization claiming to represent employees of the Employer.¹

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties are in substantial agreement that the unit appropriate for collective bargaining should comprise all production and maintenance employees of the Employer, including inspectors, watchmen, shippers, checkers, and chauffeurs,² but excluding office clerical employees, office employees, and all supervisory employees with authority to hire and discharge. The parties are in dispute with respect to the inclusion of two timekeepers; the Employer would include them and the Petitioner would exclude them from the unit. The Committee took no position with respect to this issue.

The record reveals that although the timekeepers are carried on the "shop" pay roll, they nevertheless, exclusively perform timekeeping duties. In accordance with the Board's customary practice, we shall exclude them from the production and maintenance unit.³

We find that all production and maintenance employees of the Employer's plant, including inspectors, watchmen, shippers, checkers, and chauffeurs, but excluding timekeepers, office employees, office clerical employees, and all or any other supervisory employees with

¹ At the hearing the Petitioner contested the status of the Committee as a labor organization. The record discloses that the Committee is composed of a group of employees who signed individual application cards designating it to represent them in matters relating to collective bargaining with respect to wages and working conditions. Although the Committee, as yet, has no constitution or bylaws, the record is clear that it constitutes a labor organization within the meaning of Section 2 (5) of the Act. See *Matter of Wilson Athletic Goods Manufacturing Company*, 61 N. L. R. B. 780; *Matter of Louisville Sanitary Wiper Company, Inc.*, 65 N. L. R. B. 88.

² There are approximately 73 employees in the proposed unit.

³ See *Matter of Joseph Dyson & Sons, Inc.*, 60 N. L. R. B. 867; *Matter of The Vanta Company*, 66 N. L. R. B. 912.

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

The record discloses that on June 21, 1946, the Employer's plant was closed because of a strike, which was still in progress at the time of the hearing. The Petitioner therefore requests that the last pay-roll date immediately preceding the strike should be adopted as determinative of voting eligibility. The Employer contends that no election should be held until the plant is reopened and that if such event occurs prior to the issuance of the Direction of Election herein, that the pay-roll period immediately preceding the Direction govern eligibility. The Committee does not seek a postponement of the election, but agrees with the Employer that the Board's customary eligibility date should be adopted.

We see no reason to postpone the election until the Employer has resumed operations. Assuming that the strike is still current and that the plant has not resumed operations, we shall grant the Petitioner's request and 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 week preceding June 21, 1946, subject to the limitations and additions set forth in the Direction.⁴ However, in the event the Employer's plant has been reopened⁵ prior to the Decision and Direction of Election, those eligible to vote shall be all employees employed during the pay-roll period immediately preceding the date of our Direction of Election herein, including employees on strike.⁶

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Wicaco Machine Corporation, Philadelphia, Pennsylvania, 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 Fourth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, as amended, among the employees in the unit

⁴ See *Matter of Norris, Incorporated*, 60 N. L. R. B. 297.

⁵ The Employer asserted at the hearing that it intended to reopen its plant as soon as it could obtain sufficient replacements for the striking employees, regardless of the continuance of the strike.

⁶ See *Matter of Rudolph Wurlitzer Company*, 32 N. L. R. B. 163.

found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding June 21, 1946,⁷ 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 Electrical, Radio & Machine Workers of America, CIO, or by Wicaco Employees' Committee, for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

⁷ As hereinbefore indicated, in the event the Employer's plant has been reopened prior to the Decision and Direction of Election, those eligible to vote shall be all employees employed during the pay-roll period immediately preceding the date of our Direction of Election herein, including employees on strike.