

In the Matter of AIR UTILITIES, INC., EMPLOYER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1411, PETITIONER

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In the Matter of AIR UTILITIES, INC., EMPLOYER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 735, PETITIONER

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Cases Nos. 10-R-1805, 10-R-1881, 10-R-1882, and 10-R-1891, respectively.—Decided August 29, 1946

Messrs. J. O. Bass and Judson Harwood, of Nashville, Tenn., for the Employer.

Mr. Paul Chipman, of Atlanta, Ga. and Mr. John R. Lallemand, of Nashville, Tenn., for the Petitioners.

Mr. Arthur Christopher, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

Upon separate petitions duly filed, a consolidated hearing in these cases was held at Murfreesboro, Tennessee, on June 18, 1946, before Albert D. Maynard, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the cases, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Air Utilities, Inc., a Tennessee corporation, operates a plant at Murfreesboro, Tennessee, where it is presently engaged in the manufacture of knitting machines and the fabrication of carbon parts which are used in the production of atomic energy. During the first 8 months, of 1945, the Employer was engaged solely in carbon fabri-

cation operations. Since that time, the production of carbon products has been reduced by 75 percent and the Employer has begun the manufacture of circular knitting machines to be used in the manufacture of hosiery. During 1945, a substantial portion of the approximately \$100,000 worth of raw materials used in its carbon fabrication operations was shipped to its Murfreesboro plant from sources outside the State of Tennessee. During the same year, the Employer sold in excess of \$100,000 worth of finished carbon parts to a concern engaged in interstate commerce. During the period from September 1945 to June 1946, the Employer purchased approximately \$150,000 worth of raw materials for use in the manufacture of knitting machines, of which amount about 25 to 50 percent represented shipments to its plant from points outside the State. At the time of the hearing, however, the Employer had not as yet commenced the distribution of the knitting machines.

We find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Lodge 1411, and International Association of Machinists, Lodge 735, herein called Lodge 1411 and Lodge 735, respectively, are labor organizations claiming to represent employees of the Employer.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Employer has refused to recognize either Lodge 1411 or Lodge 735 as the exclusive bargaining representative of any of its employees. At the hearing the Employer asserted that an existing contract between it and the "We Keep Em Flying Club," herein called the Club, constitutes a bar to this proceeding.

On August 13, 1942, the Employer and the Club executed a collective bargaining contract covering the employees here involved. It provided for an initial period of one year and for its automatic renewal from year to year thereafter, unless either party gave notice in writing at least 30 days before any anniversary date of a desire to modify or terminate the agreement. The contract was renewed in accordance with its terms in 1943 and 1944 and again in 1945, after it had been amended in certain immaterial respects. Thereafter the Club, by vote of its membership, adopted a motion dissolving itself as of March 27, 1946, and transferring all funds belonging to it, after payment of debts, to Lodge 1411. The Employer was notified of this action on March 28, 1946, and a certificate of surrender of the charter of the Club was filed with the Secretary of State of the State of Tennessee

on April 18, 1946. On May 3, 1946 and on June 6, 1946, in both instances more than 30 days before August 13, 1946, the fourth anniversary date of the contract, as amended, Lodge 735 and Lodge 1411 filed with the Board their respective petitions.

Inasmuch as the petitions of both unions were filed before the operative date of the automatic renewal clause of the contract, that instrument cannot, under well-established principles of the Board, bar an election at this time.¹ Moreover, the fact that the Club has ceased to function as a representative of the employees of the Employer and is non-existent, also renders the contract ineffective as a bar to this proceeding.²

We find that questions affecting commerce have 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 UNITS

In its three separate petitions, Lodge 1411 seeks to establish three separate units, the first consisting generally of all production and maintenance employees, the second comprising all office, clerical and technical employees, and the third consisting solely of guards. At the hearing, however, Lodge 1411 expressed its desire to include the guards in the production and maintenance unit; but stated, in the alternative, that, if the Board opposes such inclusion, it is prepared to represent the guards separately in accordance with its original position. Lodge 735 petitions for a unit composed of all foremen.

The Employer agrees generally that separate units of office, clerical, and technical employees and of production and maintenance employees are appropriate. There is some question, however, with respect to (1) the guards, whom the Employer would exclude from the production and maintenance unit; (2) the engineers, whom the Employer would include in the production and maintenance unit and Lodge 1411 would exclude from any unit; (3) the aircraft draftsman, whom all parties agree to include in the production and maintenance unit; and (4) the foremen who, the Employer contends, may not form any appropriate unit. With respect to the latter group, the Employer, without waiving its argument that a unit of foremen is inappropriate, opposes the inclusion of the superintendent of the carbon department in the requested unit.

We turn now to a discussion of the units and the disputed categories of employees.

¹ See *Matter of Michigan Producer's Dairy Company*, 68 N. L. R. B. 6, and cases cited therein.

² See *Matter of The Black-Clawson Company*, 63 N. L. R. B. 773.

The Production and Maintenance Unit

There has been no bargaining history at the Employer's operation. The production and maintenance unit, as agreed upon by the parties, would embrace all rank and file production and maintenance employees including leadmen,³ the inspector of carbon parts, knitter, paint department employee, and the receiving and shipping clerk. While the parties would also include the aircraft draftsman, there is, as noted above, some question as to the propriety of his inclusion; there is, in addition, a dispute as to the guards and engineers.

The aircraft draftsman: Although this employee works in the plant within close proximity to the production employees, his work is purely of a technical nature, and appears to be indistinguishable from that of the other draftsmen whom the parties agree to include in the office, clerical, and technical unit. Accordingly, inasmuch as this employee has a closer community of interest with the office, clerical and technical employees than with the production and maintenance employees, we shall include the aircraft draftsman in the office, clerical, and technical unit.

Guards: The Employer employs four guards at its plant. As stated above, Lodge 1411 desires the inclusion of these guards in the production and maintenance unit, whereas the Employer is opposed on the ground that they lack a community of interest with the production and maintenance employees. The guards are neither militarized, deputized, nor uniformed. Their duties relate solely to the preservation of Employer property and it does not appear that they perform any monitorial functions. Accordingly, inasmuch as the duties of the guards are custodial in nature, we shall, in keeping with our usual practice in such cases,⁴ include them in the unit of production and maintenance employees.

Engineers: There are six employees in this classification. Lodge 1411 urges their exclusion from any unit on the ground that they are professional employees whose interests are closely allied with management, whereas the Employer would include them in the production and maintenance unit. None of these employees performs managerial functions. Their duties consist primarily of work in general designing. At the present time one engineer is devoting his entire working time to the development of a special machine. Five engineers are college trained and, of these, one has a college degree in engineering. It is clear from the foregoing that the engineers lack a community of interest with the production and maintenance employees. It is likewise apparent that their interests, problems and duties are substantially different from those of the office, clerical and technical

³ The record reveals that leadmen are not supervisory employees within the customary definition of that term.

⁴ See *Matter of United States Gypsum Company*, 66 N. L. R. B. 619.

employees. We shall, therefore, exclude the engineers from any unit sought herein.

The Office, Clerical and Technical Unit

The office, clerical, and technical unit as agreed upon by the parties would embrace all rank and file office, clerical, and technical employees, including draftsmen, blueprint machine operators, the first aid worker and trainee in drafting. As found above, this unit will also include the aircraft draftsman, contrary to the position of any of the parties herein.

The Unit of Foremen

The Employer contends that a unit of foremen would not be appropriate because its foremen are not employees within the meaning of the Act.

For the reasons stated by us in the *L. A. Young* case⁵ and following cases,⁶ we find, contrary to the contention of the Employer, that its foremen are "employees" within the meaning of the Act and that, as employees, they are entitled under Section 9 (b) of the Act to be placed in some appropriate unit.

Lodge 735 seeks a unit of all production and maintenance foremen, i. e., those employed in its machine production, carbon, and material control departments. It would include in this group the night superintendent of the machine production department and the supervisors of the material control and precision tool departments. Apart from the superintendent of the carbon department concerning whom the parties are in dispute, all these employees have substantially the same authority over their subordinates, have similar powers, duties, and responsibilities and comprise the lowest level in the plant hierarchy having supervisory powers. Accordingly, in view of the foregoing, we are persuaded that these employees constitute a homogeneous group which may function together for collective bargaining purposes.

There remains for consideration the disposition to be made of the superintendent of the carbon department.

Superintendent of the carbon department: The Employer contends that this employee, Eph Lytle, should not be included in the unit of foremen on the grounds that he occupies a higher level in the hierarchy of supervision than the foremen and that his duties make him part of "top" management. This employee, unlike the night superintendent of the machine production department whose position is akin to that of a foreman, has complete charge of the carbon fabricating operations

⁵ *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298. See, also, *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, 64 N. L. R. B. 1212, enf'd 157 F. (2d) 80 (C. C. A. 6), decided August 12, 1946, 18 LRR 2268.

⁶ *Matter of The Midland Steel Products Company, Parish & Bingham Division*, 65 N. L. R. B. 997; and *Matter of Kaiser Cargo, Inc.*, 67 N. L. R. B. 1027.

and is directly responsible to the plant manager. His position is comparable to that of the superintendent of the machine production department, whom Lodge 735 does not seek to represent. He has the power effectively to recommend changes in the status of the foremen and other employees who work under his supervision. He also represents the Employer in the second stage of the grievance procedure, whereas foremen act for the Employer in the initial stage. In addition to having over-all direction of the carbon department, he determines the prices submitted by the Employer in its bids for work affecting his department. Accordingly, inasmuch as the superintendent of the machine production department is not sought by Lodge 735 and in view of the facts detailed above, we shall exclude the superintendent of the carbon department as well as the superintendent of the machine production department, from the unit of foremen.

In accordance with our foregoing conclusions, we find that the following groups of employees at the Murfreesboro plant of the Employer constitute separate units appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act:

(1) All production and maintenance employees including the inspector of carbon parts, knitter, receiving and shipping clerk, paint department employee, leadmen, and guards but excluding engineers, executives, 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.

(2) All office, clerical, and technical employees including draftsmen, the aircraft draftsman and trainee in drafting, but excluding engineers, executives, 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.

(3) All foremen, including the supervisors of the material control and of the precision tool departments, and the night superintendent of the machine production department, but excluding the superintendents of the carbon and of the machine production departments and all supervisory employees above the rank of foreman.

V. THE DETERMINATION OF REPRESENTATIVES

The Employer opposes the holding of elections at this time for the asserted reason that it does not have a full staff of employees. The record discloses in this connection that, at the time of the hearing, the Employer's pay roll listed approximately 175 employees in the units found appropriate in Section IV, *supra*, or about half of the anticipated full complement of approximately 350 employees which the Employer expects to attain within 90 days of the hearing date. It shows further that the 175 employees are representative in skills of the total working force which may ultimately be employed and are

actively engaged in regular production. In addition, it is clear that, by the time this Direction of Elections issues, the estimated 90 days within which a full complement is to be attained, will have virtually elapsed. Accordingly, inasmuch as the Employer's pay roll at the time of the hearing had expanded to about 50 percent of the anticipated total complement of employees and has, in all likelihood, attained since then a much greater percentage of the anticipated total, and because those now employed are representative in skills and duties, we are of the opinion that elections at this time will accurately and conclusively reflect the wishes of the employees.⁷

We shall, therefore, direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Air Utilities, Inc., Murfreesboro, Tennessee, separate 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 Tenth 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 units referred to 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 elections, to determine (a) whether or not the employees in units (1) and (2) found appropriate in Section IV, above, desire to be represented in their respective units by International Association of Machinists, Lodge 1411, for the purposes of collective bargaining, and (b) whether or not the employees in the unit (3) found appropriate in Section IV, above, desire to be represented by International Association of Machinists, Lodge 735, for the purposes of collective bargaining.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Direction of Elections.

⁷ See *Matter of Patapsco Scrap Corporation*, 69 N. L. R. B. 911; *Matter of Hoosier-Cardinal Corporation, et al.*, 87 N. L. R. B. 49; *Matter of Pioneer Tool and Engineering Company*, 62 N. L. R. B. 1435.