

In the Matter of LOUIS MARX CO. INC. OF PENNA. and INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

Cases Nos. 6-R-1398 and 6-R-1440.—Decided September 6, 1946

DECISION
ORDER
DIRECTION OF SECOND ELECTION
AND
CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On May 27, 1946, International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., herein called the U. A. W., filed with the Regional Director for the Sixth Region, Pittsburgh, Pennsylvania, an amended petition and a petition, respectively, alleging that questions affecting commerce had arisen concerning representation of employees of Louis Marx Co. Inc. of Penna., Erie, Pennsylvania, herein called the Employer, and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act. On May 22, 1946, the Employer, the U. A. W., Toymakers Lodge #1520, International Association of Machinists, herein called the I. A. M., and a representative of the Board executed a "STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION" in each of the cases above.

On June 3, 1946, elections were conducted in the above matters in accordance with the stipulations and the Rules and Regulations of the Board. Upon the conclusion of the elections, a Tally of Ballots for each election was furnished the parties in accordance with the Board's Rules and Regulations. The Tallies show that, of the 630 eligible voters in the production and maintenance voting unit in Case No. 6-R-1398, 465 cast ballots, of which 215 were for the U. A. W., 239 for the I. A. M., 7 against the participating labor organizations, and 4 challenged; while, of the 33 eligible voters in the toolroom unit in Case No. 6-R-1440, 31 cast ballots, of which 2 were for the U. A. W., 28 for the I. A. M., and 1 challenged.

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On June 6, 1946, the U. A. W. filed a number of objections to the conduct of the elections, requesting that the elections be set aside. These objections were as follows:

1. Insufficient time for production and general maintenance employees to vote during their regular working hours.

2. Officers and members of the International Association of Machinists were permitted, contrary to the election agreement, to circulate and distribute literature to employees on the date of election, and while the employees were in line to vote.

3. Officers and members of the International Association of Machinists circulated and distributed on Company time and property during voting hours, literature saying, "If you want your increase in pay retroactive to May 1, 1946, mark your vote right," arrow indicating I. A. of M.

4. The plant manager failed to stop distribution of literature during working hours and on Company time on election day, and during the voting period. When requested to do so by the C. I. O. Committee, he stated the literature was only a sample ballot and it instructed the workers how to vote.

5. The plant manager selected one of the most active I. A. of M. members to notify the workers when to vote, contrary to the election agreement.

6. Contrary to the election agreement, the three runners chosen by the Unions and Company were confined to the Polls area during the voting period.

7. While the workers were being lined up to vote, the plant manager was present talking to the workers and laughingly stated the Tool Room workers had voted first.

On July 8, 1946, the Regional Director, following an investigation, issued a Report on Objections, in which he found that the objections raised substantial and material issues and recommended a hearing on the objections. Thereafter, on August 1, 1946, the I. A. M. filed exceptions to the said Report on Objections.

Upon the entire record in the case, including the Stipulations, the Tallies of Ballots, the objections filed by the U. A. W., the Report on Objections, and exceptions filed by the I. A. M., the Board makes the following:

FINDINGS OF FACT

A. The First Objection

The I. A. M. has been the recognized exclusive bargaining representative of all employees of the Employer since 1937. On April 23, 1946, the U. A. W. filed its original petition in Case No. 6-R-1398. Following a conference among representatives of the Employer, the

U. A. W., and the I. A. M., it was agreed that two units were appropriate,¹ whereupon the U. A. W. filed the petition in Case No. 6-R-1440 and the amended petition in Case No. 6-R-1398, and the parties entered into the stipulations mentioned above.

At the conference which resulted in the signing of the election stipulations, the employer representatives estimated that there were approximately 450 employees in the production and maintenance unit and 30 or 35 in the toolroom unit, and that the bulk of all the employees worked on the day shift, ending at 3:30 p. m. The employer representatives indicated their willingness to permit employees to vote during working hours, and it was agreed that the polls would be open from 1:30 to 5:30 p. m. It was further agreed that employees would be released in groups in accordance with a schedule to be worked out by the employer representatives, in order that the polls would not be congested at any time, and in order that all eligible employees would have an opportunity to vote during working hours. When the polls were opened on June 3, 1946, it appeared that no detailed time schedule had been submitted by the Employer. A representative of the Employer suggested to the Board agent that employees in the toolroom vote first, followed by employees in the press room, the lithograph department and the assembly department, in that order. After the voting began, it was discovered that the employer representatives' estimate of the number of eligible production and maintenance voters—450—was considerably lower than the actual number—630. A substantial number of day-shift employees in the assembly department, the last department on that shift to vote, were not released to cast ballots until about the end of their shift, at 3:30 p. m. Many of these employees were deterred from voting because of the extremely long line at the polling place after 3:30. Employees of the assembly department were the only ones who did not have an opportunity to vote during working hours. An analysis of the eligibility lists and the observers' lists reveals that only 70 percent of the eligible voters in the assembly department voted. A larger percentage, ranging from 76.47 to 93.94, voted in each of the other departments. The U. A. W. alleges that it was common knowledge throughout the plant that the I. A. M. was weakest in the assembly department. We find it unnecessary to determine whether or not there is merit in this allegation. For the assembly department is by far the largest department of the Employer,² and these employees did not have the same opportunity as the employees in the other departments to vote during working hours.

¹ One of production and maintenance employees, generally, and the other of toolroom workers

² The number of employees in the assembly department eligible to vote was 410. There were 220 eligible voters in all other departments in the production and maintenance voting unit

We are of the opinion that an election should be held which will give employees throughout the plant the same voting opportunity. It appears that the U. A. W.'s first objection, relating to the sufficiency of time to vote during regular working hours, is limited only to the election in the production and maintenance voting group. In any case, it is clear that this objection is valid only with respect to the employees in this voting group, inasmuch as all eligibles in the toolroom voting unit were afforded equal opportunity to vote during working time.

B. The Remaining Objections

The remaining objections to the elections by the U. A. W. allege, as indicated above, various electioneering practices by the I. A. M., failure of the Employer to stop such practices, favoritism evinced by the Employer, and confining observers³ to the area of the polls, as bases for setting aside the elections. It is apparent, however, that the I. A. M. and the U. A. W. were both guilty of electioneering on the day of the elections. Furthermore, the Employer, in failing to stop such electioneering, treated both unions in the same manner. In addition, we are not convinced that the Employer exhibited favoritism to the I. A. M., either prior to or during the elections, or that confining observers to the polling place, even if done by Board agents, warrants the invalidation of either election.

C. Conclusions

We hereby sustain the U. A. W.'s first objection insofar as it relates to the election among the production and maintenance employees, and we shall, therefore, set aside this election and direct a new one. However, we overrule the U. A. W.'s remaining objections and there is, consequently, no basis for voiding the election among the employees in the toolroom unit.

D. The Certification

1. A question affecting commerce has arisen in Case No. 6-R-1440 concerning the representation of employees of Louis Marx Co. Inc. of Penna., Erie, Pennsylvania, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All employees of the toolroom of the Employer, including toolmakers, diemakers, machinists, jib and fixturemen, machine repairmen, welders, toolroom crib attendants, apprentices and helpers, but 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, constitute a unit

³ Referred to by the U. A. W. as "runners"

appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Inasmuch as the objections to the election held among employees in this unit have been overruled, and since it appears from the Tally of Ballots that these employees have selected the I. A. M. as their bargaining representative, we shall certify the I. A. M. in this unit.

ORDER AND DIRECTION OF SECOND 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 ORDERED that the election of June 3, 1946, conducted in Case No. 6-R-1398 among the production and maintenance employees of Louis Marx Co. Inc. of Penna., Erie, Pennsylvania, be, and it hereby is, set aside; and it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Louis Marx Co. Inc. of Penna., Erie, Pennsylvania, a second 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 Sixth 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 described in the **STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION**, in Case No. 6-R-1398, mentioned above, who were employed during the pay-roll period immediately preceding the date of the 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 second election, to determine whether they desire to be represented by International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., or by Toy-makers Lodge #1520, International Association of Machinists, for the purposes of collective bargaining, or by neither.

CERTIFICATION OF REPRESENTATIVES

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,

IT IS HEREBY CERTIFIED that in Case No. 6-R-1440 Toymakers Lodge #101, International Association of Machinists, has been designated and selected by a majority of employees of Louis Marx Co. Inc. of Penna., Erie, Pennsylvania, in the unit hereinabove found to be appropriate, under paragraph 2 of subsection D, "The Certification," of the above Findings of Fact, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision, Order, Direction of Second Election, and Certification of Representatives.