

In the Matter of WOOD EMBLY BRASS COMPANY, EMPLOYER and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), PETITIONER

Case No. 6-R-1409.—Decided September 10, 1946

*Mr. William H. Strauss, of Waynesboro, Pa., for the Employer.
Messrs. Robert P. O'Donnell and Harold N. Pittman, both of
Waynesboro, Pa., for the Petitioner.
Mr. Herbert J. Nester, of counsel to the Board.*

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

Upon a petition duly filed, the National Labor Relations Board, on July 10, 1946, conducted a prehearing election pursuant to Article III, Section 3, of the Board's Rules and Regulations among the employees in the alleged appropriate unit, to determine whether or not they desire to be represented by the Petitioner for the purposes of collective bargaining.

At the close of the election, a Tally of Ballots was furnished the parties. The Tally reveals that there were approximately 35 eligible voters and that 33 valid ballots were cast, of which 31 were for the Petitioner and 2 were against.

Thereafter, pursuant to Article III, Section 10, of the Board's Rules and Regulations, an appropriate hearing was held at Waynesboro, Pennsylvania, on July 10, 1946, before W. G. Stuart Sherman, 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.

In its brief, the Employer moved to set aside the election and requested oral argument before the Board. As grounds for its motion, the Employer contends that the existing issues regarding the composition of the proposed unit should have been resolved at a hearing and a finding made by the Board establishing an appropriate unit, before the election was conducted.¹ The Supreme Court of the United States

¹ The Employer contested the authority of the Regional Director to conduct the election herein and declined to appoint an observer or otherwise participate.

has held that the Board has the administrative authority to schedule a hearing at any point in the investigation and that the holding of an election prior to the scheduling of a hearing is not contrary to the provisions of Section 9 (c) of the Act.² The propriety of the Board's procedure herein is sustained by virtue of the fact that no final decision or certification is issued until the parties have had the opportunity to be heard, thereby obviating any possibility of prejudice or predilection.³ Accordingly, the Petitioner's motion and request for oral hearing is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Wood Embly Brass Company, a Pennsylvania corporation, operates a foundry at Waynesboro, Pennsylvania. Its annual purchases of raw material, consisting of aluminum, brass, and bronze, are valued at in excess of \$150,000, between 5 and 10 percent of which originates outside the Commonwealth of Pennsylvania. The Employer produces annually finished products consisting of aluminum, brass, and bronze castings which are valued at in excess of \$175,000, between 8 and 10 percent of which is sold and 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.

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.

² See *Inland Empire District Council Lumber and Sawmill Workers Union v Mills, et al.*, 325 U. S. 697.

³ See *Matter of E. R. Squibb & Sons*, 67 N. L. R. B. 557.

IV. THE APPROPRIATE UNIT

The Petitioner urges as appropriate a unit of all production and maintenance employees of the Employer's Waynesboro plant, but excluding clerical employees and all supervisory employees with authority to hire and discharge.⁴ The Employer contests the composition of the proposed unit and alleges that two units should be established, one comprising its craft employees and the other comprising common laborers. The Employer also opposes the inclusion of the pattern maker and the truck driver in the bargaining unit.

The record reveals that there are approximately 16 common laborers in the Employer's plant and that the remainder of its personnel consists of molders and core makers who perform skilled and semi-skilled functions. All of the employees, however, are under the same supervision, are hourly paid, and are engaged in common activities incidental to the production of the Employer's product. There are no departmental divisions in the plant and all personnel work together in 1 foundry building. Although the record discloses that there is a higher turn-over among the common laborers, it is apparent that these employees are employed on a permanent basis and have a definite community of interest with the other production and maintenance employees. We shall, therefore, include them in the unit.

Pattern maker: The Petitioner would include, and the Employer would exclude, the pattern maker. It is revealed that this employee was originally an independent contractor from whom the Employer obtained molds necessary for production activities. The increased volume of business necessitated that the Employer hire a full-time pattern maker and this employee was accordingly retained in this position. He still retains his own shop outside the Employer's plant and uses his own tools and materials in all work performed for the Employer. He is not required to work any specified number of hours and is paid in accordance with the actual time he devotes to his work on the Employer's products. It is apparent from the foregoing facts that the pattern maker's interests differ substantially from those of the other employees involved herein, and we shall, therefore, exclude him from the unit.

Truck driver: One of the laborers has been assigned to duties of driving a truck outside the Employer's plant. Although the record reveals that he frequently is employed by members of management for private purposes, and receives no remuneration therefor from the Employer, it is definitely established that he spends a majority of his time in the performance of his usual duties as truck driver at the plant. We are of the opinion that his activities are sufficiently related

⁴ There are approximately 35 employees in the proposed unit.

with those of the other common laborers to warrant his inclusion in the bargaining unit.

We find that all production and maintenance employees at the Employer's plant, including laborers and the truck driver, but excluding clerical employees, the pattern maker, and all or any 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

The results of the election held previous to the hearing disclose that the Petitioner has secured a majority of the valid votes cast and that there were no challenged ballots which could affect the results of the election. Under these circumstances, we shall certify the Petitioner as the collective bargaining representative of the employees in the unit hereinbefore found appropriate.

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, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO) has been designated and selected by a majority of all production and maintenance employees of Wood Embly Brass Company, Waynesboro, Pennsylvania, including the truck driver, but excluding clerical employees, the pattern maker, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said 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 and Certification of Representatives.