

In the Matter of HARRY C. MOORE, D/B/A MOORE-EASTWOOD AND COMPANY and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, LOCAL 768, CIO and MOORE-EASTWOOD EMPLOYEES UNION

*Case No. 9-RE-14.—Decided November 5, 1946*

*Mr. Robert F. Young*, of Dayton, Ohio, for the Employer.

*Mr. Robert E. Karch*, of Dayton, Ohio, for the Association.

*Mr. Warren H. Leland*, of counsel to the Board.

## DECISION

AND

### DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Dayton, Ohio, on September 13, 1946, before Martin Sacks, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE EMPLOYER

Harry C. Moore, d/b/a Moore-Eastwood and Company, herein called the Employer, is engaged at its Dayton, Ohio, plant in the manufacture of small parts for the aircraft industry. During the year ending July 31, 1945, the Employer purchased raw materials valued at approximately \$100,000, of which about 50 percent was received from points outside the State of Ohio. During the same period, the Employer manufactured products valued at approximately \$530,000, of which about 75 percent was sold and shipped to points outside the State of Ohio.

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

##### II. THE ORGANIZATIONS INVOLVED

United Electrical, Radio & Machine Workers of America, Local 768, herein called the CIO, is a labor organization affiliated with the 71 N. L. R. B., No. 86.

Congress of Industrial Organizations, claiming to represent employees of the Employer.<sup>1</sup>

Moore-Eastwood Employees Union, herein called the Association, is an unaffiliated labor organization, claiming to represent employees of the Employer.

### III. THE QUESTION CONCERNING REPRESENTATION

On December 22, 1943, the Employer and the CIO executed a collective bargaining agreement which provided that it was to continue in effect for 1 year, and from year to year thereafter in the absence of written notice by either party to the other, 30 days prior to any anniversary date, of a desire to terminate. On November 20, 1945, the Employer, in accordance with the provisions of the 1943 contract, notified the CIO of its intention to terminate the agreement. At a conference held on January 11, 1946, between the Employer and the CIO, the CIO requested continued recognition as exclusive bargaining representative of employees of the Employer. And on March 5, 1946, the Association asserted a rival claim to representation of such employees. The Employer, confronted with these conflicting claims, filed the petition in this proceeding on March 18, 1946.

It is clear from these facts that the Employer apprised the CIO in timely fashion of a desire to terminate the 1943 agreement, and thereby effectively forestalled its automatic renewal. Thus, this contract cannot operate as a bar to a current determination of representatives.

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

In substantial accordance with the agreement of the Employer and the Association, we find that all production and maintenance employees of the Employer at its Dayton, Ohio, plant, including inspectors, but excluding clerical and technical workers, 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>2</sup>

<sup>1</sup> Although duly served with notice, the CIO did not appear at the hearing.

<sup>2</sup> This unit is virtually identical to that described in the 1943 contract between the Employer and the CIO.

## V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot, subject to the limitations and additions set forth in the Direction.

Although the CIO did not appear at the hearing, in view of its past contractual relationship with the Employer we shall accord it a place on the ballot.<sup>3</sup> If the CIO does not wish to participate in the election, however, it may withdraw from the ballot by informing the Regional Director for the Ninth Region to that effect within 10 days of the issuance of this Decision and Direction of Election.

## DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Harry C. Moore, d/b/a Moore-Eastwood and Company, Dayton, Ohio, 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 Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the 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 Electrical, Radio & Machine Workers of America, Local 768, CIO, or by Moore-Eastwood Employees Union, for the purposes of collective bargaining, or by neither.

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<sup>3</sup> Cf. *Matter of J. Cook Waste Paper Company*, 58 N. L. R. B. 1323.