

IN the Matter of ALLIS-CHALMERS MANUFACTURING COMPANY, EMPLOYER and EMPLOYEES ASSOCIATION, NORWOOD WORKS OF ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER

*Case No. 9-R-2189.—Decided April 30, 1947*

*Mr. W. J. McGowan*, of Milwaukee, Wis., and *Mr. Arnold Thorsen*, of Norwood, Ohio, for the Employer.

*Messrs. Philip J. Kennedy* and *Harry Detmaring*, of Cincinnati, Ohio, for the Petitioner.

*Mr. Arthur L. Garfield*, of Dayton, Ohio, and *Mr. Ellsworth G. Heine*, of Norwood, Ohio, for the Intervenor.

*Mr. Irving D. Rosenman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon an amended petition duly filed, hearing in this case was held at Cincinnati, Ohio, on February 27, 1947, before William O. Murdock, 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

Allis-Chalmers Manufacturing Company, a Delaware corporation, is engaged at its Norwood, Ohio, plant in the manufacture and sale of integral horsepower electric motors and centrifugal pumps. During the past year the Employer purchased for use at this plant raw materials valued in excess of \$5,000,000, of which 60 percent represented shipments from points outside the State of Ohio. During the same period the Employer manufactured in excess of \$6,000,000 worth of finished products, approximately 80 percent of which represented shipments to points outside the State.

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

The Petitioner is an unaffiliated labor organization, claiming to represent employees of the Employer.

United Electrical, Radio and Machine Workers of America, Local 765, herein called the Intervenor, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

On April 30, 1946, the Petitioner requested recognition of the Employer as the exclusive bargaining representative of its production and maintenance employees. The Employer refused this request, asserting that it intended to continue to negotiate with the Intervenor, the certified bargaining representative of its employees, until the Petitioner had been certified by the Board in an appropriate unit. The Petitioner filed its petition herein on May 31, 1946, and its amended petition on February 6, 1947.

The Petitioner and the Intervenor have at different times since 1937 served as exclusive bargaining representative of the employees sought herein. On September 17, 1944, as the result of an election held pursuant to the Board's Decision and Direction of Election,<sup>1</sup> the Intervenor was certified as the exclusive bargaining representative of these employees, and has since been in contractual relationship with the Employer concerning them. It executed its most recent contract with the Employer on September 30, 1946. The agreement provided for an initial period ending April 15, 1948, and for its automatic renewal for annual periods thereafter. A supplemental agreement, executed by the Employer and the Intervenor simultaneously with the 1946 contract, provided further that:

This agreement \* \* \* shall be subject to rulings or determinations made by the National Labor Relations Board on the petition filed by [the Intervenor] on or about May 31, 1946 \* \* \*

At the hearing the Intervenor urged its current contract as a bar. We do not agree. Inasmuch as the filing of the original petition preceded the execution of the September 30, 1946, contract,<sup>2</sup> that instrument cannot under well-established rules of the Board, bar an election at this time.<sup>3</sup> Furthermore, the contract is precluded from being

<sup>1</sup> *Matter of Allis-Chalmers Manufacturing Company*, 43 N. L. R. B. 255

<sup>2</sup> Although the amended petition followed the contract, it made only minor changes in the requested unit, and therefore did not impair the effectiveness of the original petition on the contract bar issue. *Matter of General Electric X-Ray Corporation*, 72 N. L. R. B. 1245.

<sup>3</sup> *Matter of Central Ohio Light & Power Company*, 72 N. L. R. B. 1414, and *Matter of Ste Genevieve Lime & Quarry Company*, 70 N. L. R. B. 1259.

a bar by the terms of the supplemental agreement thereto which makes the contract subject to the rulings or determinations of the Board.<sup>4</sup> Accordingly, we find that no bar exists to a present 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

We find, substantially in accord with the parties, that all production and maintenance employees at the Norwood, Ohio, plant of the Employer, including ordinary or checking inspectors and testers, but excluding supervisory inspectors, main office employees, cooperative students, operating engineers in the power house, wood and metal pattern makers and pattern makers apprentices, supervisory shop clerks, superintendents, assistant superintendents, foremen, assistant foremen, group or unit leaders, graduate student apprentices, time-study employees, confidential employees, and all or any other 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>5</sup>

#### DIRECTION OF ELECTION <sup>6</sup>

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Allis-Chalmers Manufacturing Company, Norwood, 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 Regu-

<sup>4</sup> *Matter of Libby, McNeill & Libby*, 64 N L R. B. 30; *Matter of Willys Overland Motors, Inc.*, 35 N. L. R. B. 549.

<sup>5</sup> This unit conforms to the unit certified by the Board in *Matter of Allis-Chalmers Manufacturing Company*, 57 N. L. R. B. 1381, with the exception that the classifications "wood and metal pattern makers" and "pattern makers apprentices," which are currently represented by Pattern Makers League of North America, District 1, A. F. L., are excluded from the unit in accordance with the agreement of the parties, and that the classification "indenture apprentices" is omitted from the exclusions in accordance with the requests of the labor organizations. The Employer opposes the omission of the latter classification, relying on the Board's prior certification and on the fact that the recent contract unit specifically excludes such employees. However, inasmuch as the record discloses that the employer for many years has not had, does not now have, and does not contemplate having in the near future, such a classification of employees, we find it unnecessary to pass upon this specific exclusion. *Matter of Chrysler Motors of California*, 65 N. L. R. B. 893, and *Matter of Curtiss-Wright Corporation*, 63 N. L. R. B. 207.

<sup>6</sup> Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

lations—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 they desire to be represented by Employees Association, Norwood Workers of Allis-Chalmers Manufacturing Company, or by United Electrical, Radio and Machine Workers of America, Local 765, C. I. O., for the purposes of collective bargaining, or by neither.