

In the Matter of HARRY I. CLARK, D/B/A ALL STEEL WELDED TRUCK COMPANY, EMPLOYER and INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

*Case No. 18-R-1640.—Decided January 14, 1947*

*Mr. Edward S. Foltz, Jr.*, of Rockford, Ill., for the Employer.  
*Messrs. James Ashe and Leonard Mattson*, of St. Paul, Minn., and  
*Mr. John Grogan*, of Dubuque, Iowa, for the Petitioner.  
*Miss Irene R. Shriber*, of counsel to the Board.

DECISION  
AND  
CERTIFICATION OF REPRESENTATIVES

Upon a petition duly filed, the National Labor Relations Board on August 31, 1946, conducted a prehearing election among the employees in the alleged appropriate unit to determine whether or not they desired 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 shows that of approximately 25 eligible voters, 23 cast ballots, of which 12 were for the Petitioner and 10 against. One ballot was challenged.

Thereafter, a hearing was held at Dyersville, Iowa, on September 20, 1946, before Clarence A. Meter, 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 I. Clark, doing business as All Steel Welded Truck Company, operates a plant at Dyersville, Iowa, where he is engaged in the manufacture and assembly of industrial trucks, farm wagons, and trailers. During the first 8 months of 1946, the Employer purchased more than \$50,000 worth of raw material for the Dyersville plant, of which more

than 60 percent was obtained from points outside the State of Iowa. During the same period, the Employer's sales from the Dyersville plant exceeded \$50,000, of which approximately 40 percent was sold to out-of-State purchasers.

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

## II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization 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 in the alleged 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.

## IV. THE APPROPRIATE UNIT

The parties agreed at the hearing that the appropriate unit should be composed of all production and maintenance employees in the Employer's Dyersville plant, excluding office and clerical employees, foremen and other supervisory employees. The parties were in dispute, however, as to the supervisory status of Solomon Thoeni and Alfred Ovel.

Thoeni is in charge of shipping and receiving and acts as general foreman when the general foreman is absent. Ovel is in charge of the stock room. Each of them has a number of subordinates with respect to whom each has the power effectively to recommend hiring and discharge. We find that Thoeni and Ovel are supervisory employees within the meaning of our customary definition. Accordingly, we shall exclude them from the unit.

We find that all production and maintenance employees of the Employer at his Dyersville plant, excluding office and clerical employees, foremen,<sup>1</sup> 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

<sup>1</sup> This includes Solomon Thoeni and Alfred Ovel

## V. THE DETERMINATION OF REPRESENTATIVES

On September 5, 1946, the Employer filed objections to the conduct of the election. The objections are summarized as follows:

(1) That the pay roll used in the election did not contain a complete list of eligible voters because it did not include employees who had been temporarily laid off.

(2) That notice of the election was not received until August 30, 1946, the day before the election, with the result that the Employer was unable to notify employees who had been temporarily laid off of the election.

(3) That the Employer did not have the opportunity to appoint an observer at the election and that the individual who acted as the Employer's observer at the election, acted without authority.

(4) That the Petitioner improperly challenged one of the voters.

(5) That at least five votes were cast by supervisory employees, all of whom would have been challenged had the Employer appointed an observer.

At the hearing, the Employer contended in addition that Harry I. Clark, the sole proprietor of the All Steel Welded Truck Company, did not receive notice of the election.

As to the first objection, the record shows that on August 21, 1946, a Field Examiner for the Board, and two representatives of the Petitioner conferred with Production Manager Tull, the highest ranking supervisor in the Dyersville plant, regarding the petition herein and details of the election to be conducted. During the conference, the Field Examiner advised Tull that any employees who had been temporarily laid off by the Employer would be eligible to vote in the election. On August 28, 1946, the Field Examiner informed Tull by telephone that the election would be held on August 31, 1946, and the eligibility of voters would be determined on the basis of the pay roll of August 17, 1946. On August 30, 1946, after the Employer received official notice of the election, Tull directed a clerical employee to prepare a pay-roll list as of August 17. This list was delivered by the Employer's observer to the Board agent conducting the election. The list did not contain the names of any employees who had been laid off before August 17, and none of them attempted to vote. At the hearing, the Employer contended that there were 14 such employees, the majority of whom had been laid off in April and a few in August 1946. Inasmuch as the pay-roll list was prepared under the direction of Tull after he had been advised that temporarily laid-off employees would be eligible to vote, we perceive no reason for setting aside the results of the election because the names of laid-off employees were not on the list.

Moreover, we are not convinced that the afore-mentioned 14 employees were eligible to vote in the election because the evidence indicates that their lay-off was not temporary. Thus, since the lay-offs there has been a progressive slackening of work at the plant due to material shortages. Twelve production and maintenance workers were laid off after the election and at the time of the hearing it was expected that a further reduction of force would be necessary. Mr. Clark himself testified that he did not know when he would obtain the needed materials to return to full production. Not only has production at the plant diminished, but there appears to be no policy concerning the reemployment of laid-off employees. While Production Manager Tull testified that the laid-off employees were "kept in mind" as "available for hire," new employees were engaged after the April lay-offs, although the laid-off employees were apparently available. Under these circumstances, we find that the employees who had been laid off before the election were not temporarily laid off within the Board's usual meaning of the term<sup>2</sup> and therefore were not eligible to vote.<sup>3</sup>

As to the second objection, in addition to the official notice, the Employer was advised as early as August 21, 1946, that an election would be conducted among its employees. Indeed, Clark himself testified that he learned of the election about a week before it took place. Furthermore, on August 28, a Field Examiner for the Board informed Tull by telephone that the election would be held on August 31, 1946. Following this announcement, news of the election was rumored throughout the plant. The adequacy of the election notice is evident not only from the foregoing but from the fact that, of the 25 employees listed as eligible on the August 17 pay roll, 23 appeared at the polls. Accordingly, we find the Employer's contention that he was not afforded sufficient notice of the election to be without merit. As to the claim that no opportunity was afforded the Employer to notify the 14 laid-off employees of the election, it is immaterial to the issues here involved, in view of our finding that these employees were not eligible voters.

As to the third objection, the record shows that on August 30, 1946, when the Employer received official notice of the election from the acting Regional Director of the Board, he also received a form designating an observer and instructions for observers. The accompanying letter advised the Employer to fill out the form designating the observer and to deliver it to the Board agent conducting the election.

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<sup>2</sup> *Matter of American Sheet and Metal Works*, 69 N L R B 467, *Matter of Crosley Corporation*, 66 N L R B 349, *Matter of Fogel Refrigerator Company*, 61 N L R B 692

<sup>3</sup> For this reason, we deem it unnecessary to comment on the significance of the petition introduced at the hearing by an employee and signed by laid-off employees protesting the inadequacy of the election notice

Production Manager Tull directed a clerk in his office to name one Neuhaus<sup>4</sup> as observer. That night, Supervisor Thoeni gave both the form and the pay-roll list of August 17, 1946, to Neuhaus and requested him to act as the Employer's observer at the election. Accordingly, at the time of the election, Neuhaus appeared at the polling place, delivered both documents to the Board agent and acted as the Employer's observer at the election. He checked the voters as they came in to vote against the pay-roll list, and, at the conclusion of the election, signed the "Certification on Conduct of Election" and the "Tally of Ballots" on behalf of the Employer. On the basis of the foregoing evidence, which is uncontradicted in the record, we find that Neuhaus was duly authorized by the Employer to act, and, in fact, did act as the Employer's observer at the election.

As to the fourth objection, inasmuch as the challenged ballot cannot affect the results of the election, we find it unnecessary to make any determination with respect to this objection.

As to the fifth objection, the five employees involved are Solomon Thoeni, Alfred Ovel, Henry Althaus, August Gudenhauf and Earl March. At the hearing, the Employer completely reversed his position with regard to the eligibility of these five employees and contended that all five were entitled to vote. The record shows that Althaus, Gudenhauf and March were on the pay-roll list used in the election and furthermore, that Gudenhauf and March did vote in the election. Althaus did not appear at the polls and neither did Thoeni nor Ovel. As to Thoeni and Ovel, in view of our finding excluding them from the appropriate unit, we find that they were ineligible to vote.<sup>5</sup>

Nor do we consider meritorious Clark's contention that because he did not personally receive notice of the election, the results thereof should be nullified. The election notice was sent to the Employer's address and was brought to the attention of Production Manager Tull, the highest ranking supervisor in the plant, and the individual who had represented the Employer in all negotiations with the Board's agent. Notice to Tull was adequate notice to Clark. Moreover, Clark testified that he was aware of the imminence of the election about a week before the day of the election.<sup>6</sup>

<sup>4</sup> Neuhaus, a policeman and night watchman regularly employed by the city of Dyersville, performs watchman duties for the Employer for which he receives \$5 00 a week. His name appears on the election pay roll and he voted without challenge.

<sup>5</sup> The list was compiled after the Field Examiner for the Board discussed the eligibility of the five supervisory employees to vote with Tull. Tull stated on this occasion that Thoeni and Ovel had the right to hire and fire.

<sup>6</sup> At the hearing, one employee submitted to the hearing officer a petition signed by him and 14 other employees which stated that the signatories thereto "did not realize and fully understand" the issues involved in the election and "therefore would like to have the results of aforesaid vote declared null and void" and another election ordered. We find that the allegations contained in the afore-mentioned petition do not constitute valid objections to the election inasmuch as the results of a free, secret-ballot election must normally be given.

Upon full consideration of all the evidence, we find that the Employer's objections to the conduct of the election are without merit and they are hereby overruled.

The results of the election held before the hearing show that the Petitioner has secured a majority of the valid votes cast. We shall therefore certify it as the collective bargaining representative of the employees in the appropriate unit.

### CERTIFICATION OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that, International Association of Machinists has been designated and selected by a majority of all production and maintenance employees of Harry I. Clark, d/b/a All Steel Welded Truck Company, Dyersville, Iowa, excluding office and clerical employees, foremen and any other supervisory employees having 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 aforesaid organization is the exclusive representative of all such employees with respect to rates of pay, wages, hours of employment, and other conditions of employment.

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conclusive effect for a reasonable period if the statutory scheme for the ascertainment of representatives and for the effectuation of collective bargaining is to have any stabilizing effect. *Matter of Dorset Foods, Ltd*, 43 N. L. R. B. 390; *Matter of France Foundry and Machine Co.*, 52 N. L. R. B. 1393.