

In the Matter of AMERICAN CENTRAL MANUFACTURING CORPORATION
and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

Case No. 11-R-841.—Decided January 9, 1946

Pruit and Grealis, by *Mr. Francis Naphin*, of Chicago, Ill., and *Mr. John Hendrickson*, of Connersville, Ind., for the Company.

Mr. Frank L. Bartee, of Indianapolis, Ind., for the Union.

Mr. Joseph D. Manders, of counsel to the Board.

DECISION

AND

DIRECTIONS OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Central Manufacturing Corporation, Connersville, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clifford L. Hardy, Trial Examiner. The hearing was held at Connersville, Indiana, on August 31, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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.

Upon the entire record in the case, the Board makes the following :

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

American Central Manufacturing Corporation, an Indiana corporation, is engaged in the manufacture of sheet metal products. Its principal place of business, located at Connersville, Indiana, is involved in

the present proceeding. During the past 12 months the Company purchased raw materials, consisting principally of sheet metal, valued in excess of \$500,000, of which approximately 50 percent was shipped to the Company from points outside the State of Indiana. During the same period, the Company manufactured finished products valued in excess of \$500,000, of which approximately 50 percent was shipped to points outside the State of Indiana.

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

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about June 1, 1945, the Company and the Union's Local 151 entered into a collective bargaining agreement. The contract covers all production and maintenance employees at the Company's Connersville plant, but excludes, *inter alia*, the clerical and technical employees whom the Union now seeks to represent. The Company contends that this contract is a bar to an immediate determination of representatives, arguing that the exclusion of clerical and technical employees from the coverage of the contract precludes the Union from representing these employees at this time. Assuming that this agreement binds the Union, the petitioner in this case, we nevertheless do not agree with the Company's contention. The Board has uniformly held that the mere exclusion of certain groups of employees from the coverage of a contract does not constitute a waiver of the right to represent these groups. Therefore, inasmuch as the contract has in no way limited the Union's right to represent clerical and technical employees, we find that there exists no bar to this proceeding.¹

The Company admits that it has refused to grant recognition to the Union as exclusive bargaining representative of its clerical workers. It contends, however, that no question concerning representation has been raised with regard to technical employees because the Union has neither made a formal demand upon the Company for recognition in their behalf, nor established proof of interest among them. We find no merit in this contention, for the record discloses that the Union's status as a bargaining representative of the technical em-

¹ See *Matter of Allegheny Ludlum Steel Corporation*, 64 N. L. R. B. 1284; *Matter of Consolidation Coal Company*, 63 N. L. R. B. 169; cf. *Matter of Briggs Indiana Corporation*, 63 N. L. R. B. 1270.

ployees was disputed by the Company at the hearing, and that recognition is dependent upon Board certification.² The Union's showing of interest, noted below, is sufficient to warrant an election among the technical, as well as the clerical employees.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees among those for whom it seeks to bargain.³

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

Contentions of the Parties

The Union which, as pointed out above, currently represents the production and maintenance employees at the Company's Connersville plant, now seeks, as its primary position, a single unit of office clerical and technical employees, or, in the alternative, separate units of office clerical employees and technical employees, respectively. The office clerical group includes timekeepers, telephone and telegraph operators, pay-roll clerks, secretaries, stenographers, and accounting clerks. The technical group includes draftsmen, tool designers, tool follow-up men, tool-cost estimators, and time-study men, all of whom are employed in the Engineering and Industrial Engineering departments. The Company opposes the primary position of the Union, contending that the technical employees, who perform specialized operations, do not have interests in common with the office clerical workers, who perform non-specialized operations. There are also controversies between the parties with respect to the supervisory or confidential status of certain occupational classifications.

The Company's Offices

The Company's offices are housed in two buildings. The office clerical workers in the General Office department and the technical employees in the Engineering and Industrial Engineering departments are located in separate areas in the main office building. The Personnel department is located in the Company's other office building. In

² See *Matter of Pacific Mills*, 60 N L R B 467, *Matter of Jeffrey Manufacturing Company*, 58 N L R. B. 1129.

³ The Field Examiner reported that the Union submitted 72 authorization cards which bore the names of 53 employees listed on the Company's pay roll which contained 85 names

At the hearing the Union submitted a list containing the names of the employees whose application cards were in the possession of the Field Examiner. The Trial Examiner reported that 15 of these names appeared on the Company's Industrial Engineering Department pay roll. The Industrial Engineering Department is a technical department.

general, the workers in the General Office department and Personnel department perform routine tasks usually associated with stenographic, secretarial, and clerical work. The employees in the Engineering and Industrial Engineering department, however, perform such functions as drafting, tool designing, and tool-cost estimating which require a substantial amount of technical knowledge and practical experience. We also note that the office clerical group and the technical group, respectively, are under separate supervision, and that the clerical departments operate independently of the technical departments.

Although we have included technical employees within a unit containing office clerical workers, absent contentions to the contrary,⁴ we have frequently had occasion to recognize the difference in interests, backgrounds, and functions between the two groups, and our general policy has been to place the employees comprising these groups in separate units.⁵ Accordingly, in view of the Company's objection to a single unit of office clerical and technical employees, we shall, in accordance with our customary practice, deny the primary contention of the Union. However, we are of the opinion and conclude that all clerical employees of the Company, excluding certain named classifications, and all technical employees of the Company, excluding certain named classifications, may properly constitute separate appropriate units. We shall discuss below the individual classifications of employees with respect to which the parties are in disagreement.

Clerical Unit

With respect to the clerical unit, the parties have agreed to exclude all classifications of employees listed on Appendix A. There remains for disposition the following classifications of employees, all of whom the Union would include and the Company would exclude.

Supervisors in General Accounting Section

This section contains the bookkeeping, aircraft costs, and central costs departments. The head of each of these departments supervises a small group of clerks.⁶ Although these supervisors do not have the authority to hire and discharge, uncontradicted evidence establishes that they have the power to make effective recommendations respecting the status of their subordinates. Under these circumstances, we find them to be supervisory employees within the meaning of the Board's customary definition, and we shall exclude them from the unit.

⁴ See *Matter of Consolidated Vultee Aircraft Corporation (San Diego Division)*, 54 N. L. R. B. 103.

⁵ See *Matter of Spicer Manufacturing Corporation*, 55 N. L. R. B. 1491.

⁶ The heads of the departments indicated are Ray Bertsch, Leo Dennis, and Howard Pfeiffer.

Secretary to Works Manager, Secretary to Industrial Engineer, Secretary to Chief Engineer, Secretary to Director of Purchases, and Secretary to General Sales Manager

The first three executives above named handle labor relations, and the Director of Purchases appears to be the immediate supervisor of a number of clerical employees in the unit. We shall, therefore, exclude the personal secretaries to these four executives.⁷ The General Sales Manager, on the other hand, does not appear to exercise supervisory functions or handle labor relations matters. The Company's Assistant Treasurer testified that the work of this executive's secretary does not pertain to labor relations. We shall include her in the unit.⁸

Salary Pay-roll Clerks

The Company's two salary pay-roll clerks, who work in private offices, are under the supervision of the Assistant Treasurer. These clerks work on the pay roll of the salaried employees of the Company, including executives, supervisors, clerical, and technical employees. They keep records relating to salaries, prepare the salary pay roll, and deliver pay checks and war bonds, work similar to that performed on the factory pay roll by clerks who are concededly included in the clerical unit. The Personnel department, although it handles the hiring of salaried employees and maintains their Selective Service and group insurance records, does not at present have custody of the so-called "personnel" files of salaried employees. These files, which appear to contain little more than factual records showing each individual's initial employment, physical characteristics, and the history of his job classifications and rates of pay, are kept in a vault or locked cabinet under the jurisdiction of the Assistant Treasurer.⁹ The two pay-roll clerks in dispute have access to these files, but it is evident, nevertheless, that their function is not what is usually characterized as "personnel" work. There is no evidence establishing that in the course of their employment they acquire advance information as to the Company's position on issues which are likely to be the subject of grievance conferences or collective bargaining.¹⁰ Their knowledge of the rates of pay and earnings of employees does not *per se* make these clerks

⁷ Miss Koons, Miss Nowling, Miss Ayres, and Mrs. Wright.

⁸ Miss Ochiltree.

⁹ The Company's personnel director testified at the hearing that if the Union should be certified as the representative of the employees involved in this case, he would conduct any negotiations and grievance conferences with the Union. He stated, further, that in that event he would consider it necessary to keep in his own department the records of employees in the bargaining unit relating to union matters, grievances, reprimands, and the like.

¹⁰ Cf. *Matter of Pacific Gas and Electric Company*, 61 N. L. R. B. 564; *Matter of American Steel and Wire Company*, 58 N. L. R. B. 253.

“confidential” as we define that term. We find, therefore, that the salary pay-roll clerks are not confidential employees and we shall include them in the unit.¹¹

Pre-interviewers and Clerks in the Personnel Department

Two employees in this department, who are subordinate to the supervisors in charge of hiring, are responsible for the “screening” of all applicants seeking employment with the Company. Applicants who are rejected by these employees are denied the opportunity of being further interviewed. Under these circumstances, it is plain that these “pre-interviewers” function in a confidential capacity with respect to labor relations. We shall therefore exclude them.

The Company has several clerks whose function is to keep the personnel records of factory employees. These records are likely to contain confidential information relating to grievances, discharge, disciplinary action, and the like. We find that the Personnel department clerks are confidential employees, and we shall exclude them.

Telephone and Teletype Operators

These employees are in charge of a PBX telephone switchboard, and one employee operates a teletype machine. There is nothing in the record which indicates that any of these employees have access to information of a confidential nature.¹² Accordingly, we shall include telephone and teletype operators in the clerical unit.¹³

Technical Unit

The classifications of employees listed on Appendix B are included in the unit by the Union, without objection from the Company. The parties have agreed to the exclusion of the classifications of employees listed on Appendix C. There remains for disposition the following classification of employees which the Union would include and the Company would exclude.

Time-study Employees

The time-study men make reports containing time and motion studies of production operations. The Company, which operates under an incentive system, utilizes these reports for the purpose of set-

¹¹ See *Matter of South Bend Lathe Works*, 59 N. L. R. B. 562; *Matter of Chrysler Corporation, Chrysler Motor Division*, 58 N. L. R. B. 239; cf. *Matter of The Hoover Company*, 55 N. L. R. B. 1321.

¹² Although confidential calls are made over the telephone, an executive of the Company testified that the telephone operators are not “allowed” to listen to them.

¹³ See *Matter of Continental Steel Corporation*, 61 N. L. R. B. 97.

ting incentive rates for factory workers. In addition, the time studies prepared by the time-study men are often used by the Company for the purpose of settling grievances among factory workers. In accordance with our usual practice we shall exclude the time-study men.¹⁴

On the basis of the entire record, and in accordance with the conclusions stated above, we find that the following units, 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, are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(1) All clerical employees of the Company at Connersville, Indiana, including salary pay-roll clerks, timekeepers, telephone and teletype operators, and the secretary to the General Sales Manager, but excluding pre-interviewers and clerks in the Personnel department, secretary to Works Manager, secretary to Industrial Engineer, secretary to Assistant to the Chief Engineer, secretary to Director of Purchases, supervisors in General Accounting Section, the classifications of employees listed on Appendix A, and all other employees;

(2) All technical employees of the Company at Connersville, Indiana, including the classifications of employees listed on Appendix B, but excluding time-study men, the classifications of employees listed on Appendix C and all other employees.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with American Central Manufacturing Corporation, Connersville, Indiana, separate elections 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 direc-

¹⁴ See *Matter of Yale & Towne Manufacturing Company*, 55 N L R B 66.

tion and supervision of the Regional Director for the Eleventh 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 each of the units 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O. for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Elections.

APPENDIX A

Agreed Exclusions from Clerical Unit.

- Buyers
- Courtesy car drivers
- Factory clerical employees
- Supervisors in charge of factory pay roll
- Secretary to Treasurer and Office Manager
- Secretary to President and Vice-President
- Secretary to Personnel Director
- Salesmen
- Purchasing agents
- Supervisors in charge of sub-contract work and priorities
- Sales manager
- Assistant sales manager
- District sales managers
- Regional managers
- Personnel Department
 - Supervisor in charge of hiring female help
 - Supervisor in charge of hiring male help
- General Accounting Section
 - Supervisor in charge of billing and order department (Mr. Michal)

APPENDIX B

Inclusions in the Technical Unit with respect to which the Company made no objection.

Engineering Department

Draftsmen

Tool Designers

Tool follow-up men

Tool cost estimators

Inspection follow-up men

Industrial Engineering Department

Draftsmen

Lay-out men

APPENDIX C

Agreed exclusions from Technical Unit

Engineering Department

Chief draftsmen

Chief checker

Safety Department

Safety director

Assistant safety director