

In the Matter of YAWMAN AND ERBE MANUFACTURING COMPANY and  
OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 34, A. F. OF L.

*Case No. 3-R-1072.—Decided February 8, 1946*

*Nixon, Hargrave, Middleton & Devans, by Mr. Arthur L. Stern, of Rochester, N. Y., for the Company.*

*Mr. Jack Cadden, of Rochester, N. Y., and Mr. J. Howard Hicks, of Washington, D. C., for the Union.*

*Mrs. Augusta Spaulding, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Office Employees International Union, Local No. 34, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Yawman and Erbe Manufacturing Company, Rochester, New York, herein called the Company,<sup>1</sup> the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgeson, Trial Examiner. The hearing was held at Rochester, New York, on September 20, 1945. The Company and the Union appeared, participated, and 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

Yawman and Erbe Manufacturing Company is normally engaged in the manufacture of office and filing equipment and, during the war

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<sup>1</sup> The petition and other formal papers were amended at the hearing to show the correct name of the Company.

period, in the manufacture of ship furniture, radar housings, and other war equipment.

During 1944, the Company purchased raw materials, consisting principally of steel and miscellaneous parts, valued in excess of \$500,000, of which more than 50 percent represented material brought to its plant from points outside the State of New York. During the same period, the Company sold finished products valued in excess of \$1,000,000, of which more than 51 percent was shipped to points outside the State of New York.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Office Employees International Union, Local No. 34, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On or about August 1, 1945, the Union asked the Company for recognition as bargaining representative of its employees. The Company disagreed with the Union concerning the scope of the bargaining unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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 UNIT

The Union contends that office and non-production factory employees, including the nurse, who is classified as an "office" employee, constitute a single appropriate bargaining unit. The Company contends that "office" and "non-production factory employees" should not be included in the same bargaining unit, but that the latter should be included in the same unit with production and maintenance workers.

In addition to its approximately 500 production and maintenance employees, the Company employs approximately 90 office and clerical employees, of whom 60 are termed "office" employees and the remaining "non-production factory" employees. The so-called office employees, including accounting, credit, purchasing, order, estimating, advertis-

<sup>2</sup> The Field Examiner reported that the Union submitted 45 cards. There are approximately 85 employees in the appropriate unit.

ing and sales department employees, are housed in office space on the first two floors of one building known as the "office" building, the third floor of which is devoted entirely to production work. The so-called non-production factory employees, including office and clerical workers in the traffic, engineering, inventory, and planning departments, are housed in offices in a connected building, other parts of which are devoted to production work. Due to the nature of their work, time clerks, called factory clerks by the Company, and time-study clerks, listed by the Company among its non-production factory employees, spend their working time for the most part on the factory floor among production employees. Subject to the over-all supervision of the manager of the plant, office employees work under separate department heads, while the non-production factory employees are subject to the intermediate supervision of the works manager and to the direct supervision of separate department heads. So far as the record discloses, no special group of these employees is more closely related to one rather than to another group of employees. All punch the time clock, receive a weekly wage, and substantially the same vacation privileges.

Some of the Company's production employees are represented by Federal Labor Union Local 19620, and, for a number of years, have been covered by bargaining contracts. Although at one time factory clerks were included in this bargaining group, factory clerks were subsequently specifically excluded from coverage by the contract by agreement between the contracting parties. No clerical employees are covered by the current agreement between the Company and the Federal Labor Union Local 19620, and it appears that the contracting labor organization does not desire to represent factory clerks. We find that office and non-production factory employees, including factory clerks, may properly constitute a single bargaining unit.<sup>3</sup>

The Company and the Union disagree with respect to the unit placement of the secretary to the Company's executive officers and the assistant to the employment manager. The Company would include, and the Union exclude, these employees. The parties agree that time-study employees should be included in the unit.<sup>4</sup>

The secretary to executive officers of the Company handles all correspondence of the Company's officials, including any which relates to labor matters. The assistant to the employment manager has charge of the employment records of employees and, in the absence of the employment manager, interviews applicants for employment. Although she is not equipped to pass upon the competence of skilled applicants to suit the Company's factory requirements, a matter which

<sup>3</sup> *Matter of J H Williams & Co.*, 57 N. L. R. B. 634; *Matter of The Babcock & Wilcox Co.*, 52 N. L. R. B. 900.

<sup>4</sup> The Union clarified in its brief its uncertainty expressed at the hearing with respect to the unit placement of these employees.

is left to departmental supervisors, the assistant to the employment manager may make recommendations for hiring based upon her personal interview with the applicants. We will exclude the secretary to the Company's executive officers and the assistant to the employment manager from the bargaining unit as confidential employees.

The time-study clerks, as distinguished from time clerks whose duties are admittedly clerical, study production operations and report the results of their work to the head of the time-study department, located in the factory building. Production work is paid on a piece-rate basis, and, after consultation with the head of the time-study department, rates are determined as a result of these time studies. The record does not indicate how far the recommendation of time-study clerks influences piece rates. It is, however, quite clear that time-study clerks are not supervisory employees and that their work does not, in any manner, affect the rates of pay of the employees in the unit herein found appropriate. We will, therefore, include them in the bargaining unit.<sup>5</sup>

At the hearing, the parties agreed to include employees in the telephone department in the bargaining unit with other employees classified by the Company as "office" employees. In its brief, the Union expressed a desire to exclude these employees. We believe that telephone operators and mail clerks and messengers, who constitute the telephone department, are not confidential employees and we shall include them in the bargaining unit.<sup>6</sup>

We find that office and non-production factory employees of the Company, including the nurse, time clerks, time-study clerks, and telephone department employees, but excluding the secretary to the executive officers, the assistant to the employment manager, 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.

#### 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 Election herein, subject to the limitations and additions set forth in the Direction.

<sup>5</sup> *Matter of J. H. Williams & Co., supra.*

<sup>6</sup> *Matter of Montgomery Ward & Co., Incorporated, 38 N L R B 297.*

## DIRECTION OF ELECTION

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 Yawman and Erbe Manufacturing Company, Rochester, New York, 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 Third 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 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 Office Employees International Union, Local No. 34, A. F. of L. for the purposes of collective bargaining.