

In the Matter of WEST VIRGINIA ARMATURE COMPANY and UNITED
CONSTRUCTION WORKERS, U. M. W. A.

Case No. 9-R-1904.—Decided February 12, 1946

Messrs. C. H. Brunner, R. A. Gonamo, and J. H. Bowen, all of Bluefield, W. Va., for the Company.

Messrs. Luke Brett and W. C. Burrows, both of Beckley, W. Va., for the Union.

Mr. Frederick D. Vincent, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Construction Workers, U. M. W. A., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of West Virginia Armature Company, Bluefield, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herbert J. Nester, Trial Examiner. The hearing was held at Bluefield, West Virginia, on October 16, 1945. The Company and the Union appeared and participated.¹ 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

West Virginia Armature Company is a West Virginia corporation with its office and plant located in Bluefield, West Virginia. The Company is engaged in the business of making electrical and me-

¹ Local No. 632 of the United Electrical, Radio and Machine Workers of America, C. I. O., hereinafter referred to as the U. E., was served with Notice of Hearing, but failed to appear. 65 N. L. R. B., No. 180.

chanical repairs on coal mining equipment, and in the manufacture of repair parts for such equipment. Raw materials purchased and used by the Company during the first 6 months of 1945 were valued in excess of \$50,000, of which more than 90 percent was received from points outside the State of West Virginia. For the same period services rendered, and products sold by the Company, were valued in excess of \$100,000. Ten percent of the products sold was shipped to points outside the State of West Virginia.

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

II. THE ORGANIZATION INVOLVED

United Construction Workers is a labor organization affiliated with the United Mine Workers of America, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Following the Board's certification of the U. E. in May, 1943,² the Company and the U. E. entered into a 1-year collective bargaining contract, effective June 1, 1944, and containing a 30-day automatic renewal clause. This contract was terminated as of June 1, 1945, pursuant to timely notice given by the U. E. Ensuing negotiations between the Company and the U. E. for a new contract were unsuccessful, but an agreement was reached by the parties, dated June 1, 1945, continuing in operation the terms and conditions of the expired contract, "until such time as a new agreement has been negotiated and signed." No new agreement, however, has been negotiated and signed. It is clear from the foregoing facts that there is no contract in existence which can operate as a bar, for the June 1, 1945, agreement is of indefinite duration.³

On July 30, 1945, a membership meeting of the U. E. was held at which it was voted to sever all ties with the International and affiliate with the Union. Later the local charter was returned to the International. It appears that the Company refuses to accord recognition to the Union as the bargaining agent of its employees in the unit herein sought by the Union.

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.⁴

² See *Matter of West Virginia Armature Company, Incorporated*, 48 N. L. R. B. 1248 (Decision and Direction of Election).

³ *Matter of General Electric Company*, 48 N. L. R. B. 1044; *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512.

⁴ The Field Examiner reported that the Union submitted 56 authorization cards. There are approximately 80 employees in the alleged appropriate unit.

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 urges that a unit of all employees of the Company, including watchmen, stockroom attendants, and truck drivers, but excluding executive, supervisory and technical personnel, office clerical personnel, and timekeepers, is appropriate. The Company disagrees only insofar as it desires to exclude watchmen, stockroom attendants, and truck drivers.

Watchmen: These employees were specifically excluded from the unit the Board found appropriate in the prior proceeding,⁵ and from the unit covered by the 1944 contract between the Company and the U. E. We shall therefore exclude them.⁶

Stockroom attendants: In the unit previously established by the Board, these employees were not specifically mentioned. And it appears from the record that some question existed between the Company and the U. E. concerning their inclusion within the terms of the 1944 contract. Stockroom attendants issue material from, and keep the necessary inventory records in the stockroom. They also prepare orders for shipment and shipping documents, and check the material shipped against these records. In addition, they are responsible for checking incoming material, and incoming shipping documents and invoices. We shall include them.⁷

Truck drivers: These employees were not specifically adverted to in the Board's previous unit determination, nor is there any clear indication that they were covered by the 1944 agreement between the Company and the U. E. They are employed by the Company to pick up and deliver orders, and to solicit what business they are able. Their work, aside from loading and unloading, requires them to be away from the plant. Inasmuch as there is dispute concerning their inclusion and their interests and working conditions are different from those of other employees embraced within the unit hereinafter found appropriate, we shall exclude them.⁸

We find that all employees of the Company, including stockroom attendants, but excluding technical employees, watchmen, truck drivers, timekeepers, office clerical personnel, executive personnel, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or

⁵ See footnote 2, *supra*.

⁶ See *Matter of Peterson & Lytle*, 60 N. L. R. B. 1070; *Matter of Conant Ball Company*, 57 N. L. R. B. 1262.

⁷ See *Matter of The Terrel Machine Company*, 60 N. L. R. B. 993.

⁸ See *Matter of Blue Ribbon Laundry*, 64 N. L. R. B. 645

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 the 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.

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 the West Virginia Armature Company at Bluefield, West Virginia, 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 Article III, Sections 10 and 11, of said Rules and Regulations, 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 the 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 Construction Workers, U. M. W. A., for the purposes of collective bargaining.