

In the Matter of ALLIS-CHALMERS MANUFACTURING COMPANY and  
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA,  
LOCAL 239, CIO

*Case No. 1-R-2691.—Decided February 25, 1946*

*Mr. W. J. McGowan*, of Milwaukee, Wis., for the Company.

*Mr. Donald Tormey*, of Boston, Mass., for the Union.

*Mr. S. Roy Remar*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Electrical, Radio and Machine Workers of America, Local 239, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Allis-Chalmers Manufacturing Company, of Boston, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Walter Wilbur, Trial Examiner. The hearing was held at Boston, Massachusetts, on November 6, 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

Allis-Chalmers Manufacturing Company, a Delaware corporation, has its principal office and place of business at West Allis, Wisconsin. It is engaged generally in the manufacture of machinery of various types. It maintains plants in La Crosse, Wisconsin; Springfield, 65 N. L. R. B., No. 226.

Illinois; Oxnard, California; Pittsburgh, Pennsylvania; Norwood, Ohio; La Porte, Indiana; and Boston, Massachusetts. This proceeding involves only the Boston plant, at which it normally manufactures oil breakers, air blast breakers, and switch gear; its present production is limited to switch gear and war equipment, the latter constituting more than 50 percent of its total production. At its Boston plant, the Company uses raw materials consisting principally of steel, brass, copper, and wood, amounting to more than \$2,000,000 in value per year, of which approximately 80 percent is shipped to the plant from points outside the Commonwealth of Massachusetts. Sales of finished products from the Boston plant amount to more than \$4,000,000 in value per annum, of which approximately 65 percent is shipped to points outside the Commonwealth of Massachusetts. The normal employment at the Boston plant is approximately 652 employees.

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

## II. THE ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, Local 239, is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate 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>1</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 DETERMINATION OF REPRESENTATIVES

Pursuant to a written agreement, the Union, for some years, has been recognized by the Company as the collective bargaining representative of the production and maintenance employees of the Boston plant, excluding, *inter alia*, firemen and watchmen. The Union now seeks to enlarge the scope of the contractual unit by adding firemen and watchmen. Opposing the Union's position, the Company contends that the two groups involved are not "employeeés" within the meaning of the Act; that their duties are too closely identified with

<sup>1</sup> The Field Examiner reported that the Union submitted eight cards, bearing the names of employees listed on the Company's pay roll, and in the alleged appropriate unit.

management; and that the terms of the present contract between the Company and the Union operate as a bar to the designation of the Union as the representative of the employees here sought. There is no evidence in the record that in our opinion establishes that these employees are endowed with managerial functions, or that otherwise warrants their removal from the category of employees within the meaning of the Act. With regard to the contract, neither in its terms, nor in the circumstances surrounding its execution, are there factors to show that the Union committed itself not to seek to admit or represent other employees.<sup>2</sup> In fact, the contract provides that "nothing contained in this article shall prevent the Union from obtaining judicial determination as to the legal correctness of the exclusion of any of the above classified employees from the coverage of this agreement." Accordingly we find the Company's contentions to be without merit.

*Firemen:* The operations of the plant require uninterrupted steam pressure and the Company's insurance contracts require maintenance of sufficient pressure to operate the plant's fire apparatus; the Company employed four firemen to maintain such pressure. Firemen performing similar functions are included by the Board in a general unit of production and maintenance employees.<sup>3</sup> We shall, however, permit the preference of the firemen to determine whether or not they shall be added to the existing unit of production and maintenance employees, and to that end shall order a self-determination election. If at such election a majority of these employees select the Union as their bargaining representative, they thereby will have indicated their desire to be bargained for in the unit of production and maintenance employees now represented by the Union.

*Watchmen:* There are four watchmen who perform the duties of watchmen and guards. They do fire patrol work, are responsible for reporting infractions of plant rules, and check the entrance and departure of employees and other authorized persons. Militarized during the war, they are now wholly civilian and carry no arms except on occasion when escorting radar equipment; moreover, they are not deputized, nor is any authority vested in them to excuse or penalize employees guilty of wrongdoing. They are paid on an hourly basis. We find that the duties of the watchmen are custodial and not monitorial or confidential.<sup>4</sup> We shall permit the preference of the watchmen to determine whether or not they shall be added to the existing unit of production and maintenance employees. In the event a majority of these employees select the Union as their bargaining representative, they thereby will have indicated their desire to be bargained for

<sup>2</sup> *Matter of Allegheny Ludlum Steel Corporation*, 6-R-1180, 64 N. L. R. B. 1284.

<sup>3</sup> *Matter of The Firestone Tire and Rubber Company*, 59 N. L. R. B. 581.

<sup>4</sup> *Matter of Lectrolite Corporation*, 8-R-1818, 63 N. L. R. B. 369.

in the unit of production and maintenance employees now represented by the Union.<sup>5</sup>

We shall direct that separate elections be conducted among the employees in the separate voting groups described below 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 :

1. All firemen of the Boston plant of the Company, but excluding watchmen and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. All watchmen of the Boston plant of the Company, but excluding firemen and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.<sup>6</sup>

### 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 Allis-Chalmers Manufacturing Company, 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 direction and supervision of the Regional Director for the First 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 voting groups described 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 United Electrical, Radio and Machine Workers of America, Local 239, CIO, for the purposes of collective bargaining.

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

<sup>5</sup> *Matter of Allis-Chalmers Manufacturing Company*, 61 N. L. R. B. 631.

<sup>6</sup> *Matter of Eastern Tool & Mfg Co., Inc.*, 2-R-5417, 61 N. L. R. B. 1315.