

WROUGHT IRON INDUSTRIES, INC.<sup>1</sup> *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 189 (UAW-CIO), PETITIONER. *Case No. 7-RC-2620. March 18, 1955*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Ruth Greenberg, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named below claims to represent certain employees of the Employer.<sup>2</sup>

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:<sup>3</sup>

All production and maintenance employees at the Employer's Detroit, Michigan, plant, including the regular part-time employees, but excluding office and plant clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>1</sup> The petition was amended at the hearing to show the correct name of the Employer as indicated above

<sup>2</sup> The motion for intervention of Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is denied; we have administratively determined that the showing of interest in support of the motion is of doubtful validity.

<sup>3</sup> At the hearing, the parties stipulated to the appropriateness of the unit.

111 NLRB No. 173.

WILSON & Co. INC. *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, C. I. O., PETITIONER. *Case No. 17-RC-1916. March 18, 1955*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William M. Guerin, hearing

111 NLRB No. 170.

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The Petitioner seeks to add the Employer's exchange yard drivers in Omaha, Nebraska, to the existing contract unit of production and maintenance employees at the Employer's Omaha plant. These drivers were included in the plantwide unit which was found appropriate by the Board in 1948<sup>2</sup> and for which the Petitioner was subsequently certified.<sup>3</sup>

The Employer now contends, however, that because the exchange yard drivers were specifically excluded from the bargaining unit in post-certification contracts between the Employer and the Petitioner,<sup>4</sup> the Board should find that the Petitioner has waived its right to represent such drivers. However, the Board has frequently held that the exclusion of particular employees from a contract unit does not constitute a waiver by the contracting union of its claim to represent such employees in the future as part of the contract unit.<sup>5</sup> Accordingly, we find no merit in the Employer's waiver contention.

4. As already stated, the Petitioner seeks to add to its existing plantwide unit the exchange yard drivers attached to the Employer's Omaha plant. The Employer contends that the unit sought is inappropriate because these drivers are allied to management. These drivers are in training for the position of livestock buyer. They spend at least half of their time in hauling livestock from the yards of the Omaha livestock exchange to the Employer's Omaha plant. The balance of their time is spent in collecting and processing records of livestock purchases. In addition, those who have shown the most aptitude are permitted to make occasional purchases, themselves.

In an earlier proceeding involving the same parties, the exchange yard drivers were included by the Board in the plantwide unit over

<sup>1</sup> The hearing officer referred to the Board the Employer's motions to dismiss the petition on the grounds (1) that the employees sought are allied with management; and (2) that the Petitioner has by contract waived its right to represent these employees. These motions are denied for the reasons stated in the text below.

<sup>2</sup> 80 NLRB 1466, 1469.

<sup>3</sup> 82 NLRB 405.

<sup>4</sup> The most recent such contract was executed on October 8, 1954, for a term of 2 years.

<sup>5</sup> *United States Gypsum Company*, 107 NLRB 122; *Martin Parry Corporation*, 95 NLRB 1506; *Dunham-Herbrand Corporation*, 97 NLRB 68.

the Employer's objection.<sup>6</sup> There is no evidence that their duties have changed since the Board's decision in that case. The fact that they may ultimately become livestock buyers is not sufficient reason to deny them the right to representation under the Act; nor does that fact militate against their inclusion in the same unit with other production and maintenance employees. However, in accord with our usual practice, we will exclude as managerial employees such of the drivers, if any, who spend a substantial part of their time in making purchases for the Employer's account.<sup>7</sup> As the identity of such drivers does not appear from the record, the effect of this limitation upon the eligibility of particular drivers to vote will be determined in ruling upon challenges to their ballots.

We will, accordingly, direct an election in the following voting group:

All exchange yard drivers at the Employer's Omaha, Nebraska, plant excluding those drivers who during a substantial part of their time buy livestock for the Employer, all other employees, and supervisors.

If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute part of the existing plantwide unit. In that event, the Petitioner may bargain for the employees in the above voting group as part of such unit and the Regional Director conducting the election is instructed to issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

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<sup>6</sup> The Employer's objection in that case to the inclusion of the exchange yard drivers in the unit was based on different grounds from those here presented. See footnote 2, above.

<sup>7</sup> *Western Electric Company*, 100 NLRB 420, 423

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THE ROBERT BECHT COMPANY *and* UNITED STEELWORKERS OF AMERICA, C. I. O. AND LOCAL #183, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, A. F. OF L., PETITIONERS. *Cases Nos. 9-RC-2156 and 9-RC-2215. March 18, 1955*

### Decision and Certification of Representatives

Pursuant to a stipulation for certification upon consent election executed by the parties hereto, an election by secret ballot was conducted on August 10, 1954, under the direction and supervision of the Regional Director for the Ninth Region (Cincinnati, Ohio), among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 52 eligible voters, 51 cast ballots, of which 25 were