

In the Matter of RICHARDS-WILCOX MANUFACTURING COMPANY and  
FEDERAL LABOR UNION No. 18589

*Case No. R-33.—Decided July 8, 1936*

*Hardware and Hardware Specialties Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees—majority status disputed by employer—question affecting commerce: confusion and unrest among employees—*Unit Appropriate for Collective Bargaining:* production employees; eligibility for membership in only organization among employees; functional coherence; community of interest—*Representatives:* proof of choice: membership in union—*Certification of Representatives:* after investigation but without election.

*Mr. Robert Kleeb* for the Board.

*Hilda Droshnicop*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On December 11, 1935, Federal Labor Union No. 18589, hereinafter called the Union, filed with the Regional Director for the Thirteenth Region a petition alleging that a question affecting commerce had arisen concerning the representation of the permanent production employees of the Richards-Wilcox Manufacturing Company, Aurora, Illinois, hereinafter called the Company, and requesting the National Labor Relations Board to conduct an investigation pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. On February 28, 1936, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, issued an order authorizing the Regional Director for the Thirteenth Region to conduct an investigation and to provide for a hearing in connection therewith. A notice of hearing was issued and duly served on May 12, 1936, and a hearing was held on May 28 and 29, 1936, before Walter Wilbur, Trial Examiner duly designated by the Board. The Company filed no pleadings, did not appear at the hearing, and proffered no explanation for its absence.

Upon the record of the case, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and

other evidence offered and received at the hearing, the Board makes the following:

### FINDINGS OF FACT

#### I. THE COMPANY AND ITS BUSINESS

The Richards-Wilcox Manufacturing Company is a corporation duly organized and existing under the laws of the State of Illinois, with its principal office and place of business located at Aurora, Illinois. Its principal business is the manufacture and sale of builders' hardware, hardware specialties, garage, warehouse and folding doors, overhead carrying equipment and elevator accessories. The Company employs approximately 200 permanent production workers, and during rush seasons, about 38 temporary production workers.

The vast preponderance of the Company's raw material originates outside the State of Illinois.<sup>1</sup> A large proportion of the raw materials, which consists of elevator parts, bolts, nuts and screws, pulleys, tracks and a wide variety of machine parts, does not undergo any transformation in substance at the Company's plant, but is merely converted by mechanical manipulation into desired changes of form. Much of the material used, such as ball and roller bearings, are purchased in the identical form in which they are assembled in the final product. The manufacturing process may thus be said to consist mainly in the physical manipulation and assembly of products derived elsewhere.

The Company advertises extensively in trade journals of nationwide circulation. It has branch offices in a number of states and in several foreign countries and the great bulk of its products enjoy literally a world market.<sup>2</sup> Many of the articles manufactured by it are covered by patents; the Company has also registered several trademarks for use in interstate commerce.

<sup>1</sup> The record includes statements from all the carriers transporting shipments of raw material to the Company's plant. Most of the records cover the period from January 1, 1936, to April 30, 1936. These statements may be summarized as follows: (In the following summary the word "interstate" indicates a shipment to or from points outside of the State of Illinois; "intrastate", shipments to or from points within the State of Illinois.)

Chicago, Milwaukee, St. Paul & Pacific—6 inbound shipments interstate.

Railway Express—16 shipments interstate, 4 intrastate.

Chicago & Northwestern Railway—44 shipments interstate, 5 intrastate.

Chicago, Burlington & Quincy—108 less-than-carload shipments interstate, 55 intrastate; 15 carload shipments interstate, 17 intrastate.

National Carloading Corporation—All inbound shipments interstate.

Universal Carloading & Distributing Co.—All inbound shipments interstate.

Keosauqua Motor Express—9 inbound shipments interstate, 44 inbound shipments intrastate.

<sup>2</sup> Carriers' records covering all outbound shipments from the Company's plant (most of them from January 1, 1936, to April 30, 1936) may be summarized as follows:

Chicago, Milwaukee, St. Paul and Pacific Railway—9 shipments interstate.

Chicago & Northwestern Railway—94 shipments interstate, 18 intrastate.

In shipping its products beyond the borders of Illinois, the Company utilizes every type of carrier: land, water, parcel post, express and freight service.

All of the aforesaid constitutes a continuous flow of trade, traffic, and commerce among the several States and with foreign countries.

## II. THE UNION AND ITS ATTEMPTS TO BARGAIN COLLECTIVELY

In August, 1933, Federal Labor Union No. 18589 received a charter from the American Federation of Labor. Its membership is composed entirely of production employees of the Richards-Wilcox Manufacturing Company. At the time of its formation it was in competition with the Company's employees' representation plan (the Industrial Representation Plan of the Richards-Wilcox Manufacturing Company) but the latter no longer functions and the record shows that it has been abandoned.

After it was organized, the Union made several attempts to secure recognition by the management as the sole collective bargaining representative for the production employees, but with no success. After the petition in this proceeding was filed, and through the intervention of the Regional Director for the Thirteenth Region, a meeting was held on December 23, 1935, between the management of the Company and representatives of the Union at which the latter presented formal requests for recognition of the Union as the exclusive collective bargaining representative of the production employees. On January 6, 1936, the Company wrote to the Regional Director refusing the request on the ground of alleged doubt as to the validity of the Act. At a subsequent meeting of the management and the Union representatives at the Regional office in Chicago on April 18, 1936, the Company reiterated this position and also refused to concede that the Union represented a majority of the permanent production workers.

The Board concludes that a question concerning the representation of the production employees of the Company has arisen.

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### Footnote <sup>2</sup>—Continued

Chicago, Burlington & Quincy Railway—507 shipments interstate, 27 intrastate,<sup>1a</sup> 650 shipments interstate, 35 intrastate<sup>2a</sup>

The International Forwarding Company—All shipments interstate.

American Carloading Corporation—All shipments interstate.

National Carloading Corporation—All shipments interstate

Universal Carloading & Distributing Company—All shipments interstate

Keoshun Motor Express—122 shipments interstate, 52 shipments intrastate.

Railway Express (the record includes all express receipts. The express agent testified that probably more than 94% of the shipments were interstate)

Seventy-five per cent of the parcel post shipments from the Company's plant are interstate, the destinations including points in Asia, South America, Central America and Europe

<sup>1a</sup> January, 1936

<sup>2a</sup> April, 1936

## III. THE APPROPRIATE UNIT AND THE PROOF OF A MAJORITY

In its petition the Union designates the permanent production employees as the bargaining unit. This is a classification based not on function but on the adventitious ebb and flow of business. The testimony does not establish that the "temporary" employees were engaged for a temporary period or that if the volume of business permits, their status is any less permanent than that of other employees. The temporary as well as the permanent production workers are eligible for membership in the Union. In view of the undefined character of their tenure, the similarity of their functions and the substantial identity of their interests, we find that the temporary and permanent production employees of the Company constitute a unit appropriate for the purposes of collective bargaining.

At the hearing the Union submitted its membership roll of 124 permanent production workers and a list showing the production force of the Company to consist of 195 permanent production employees and approximately 38 temporary employees; a total of 233. On the face of the record the testimony establishes the fact that the petitioner had a majority of the production workers in its membership at the time of the hearing. To hold that the refusal of the Company to submit its own pay roll, or to utilize the opportunity to challenge the membership roll offered by the Union at the hearing can avert the consequences of the Union's showing of a majority, would put a premium on obstructive tactics without furthering the proper functioning of the Act. We are persuaded that the Union's proof that a majority of the Company's production workers are members of the Union entitles it to immediate certification as the exclusive representative of the production workers.

## IV. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

The question of representation which has arisen has caused confusion, uneasiness and unrest among the employees of the Company, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## CONCLUSIONS OF LAW

Upon the basis of the above findings, the following conclusions of law are made by the Board:

1. A question affecting commerce has arisen concerning the representation of the production employees of the Richards-Wilcox Manufacturing Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The production employees of the Richards-Wilcox Manufacturing Company, excluding executives and foremen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Federal Labor Union No. 18589, having been selected by a majority of the production employees of the Richards-Wilcox Manufacturing Company as their representative for the purposes of collective bargaining is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

### CERTIFICATION OF REPRESENTATIVES

A petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act having been duly filed, and an investigation and hearing having been duly authorized and conducted; and

The Board having duly made its findings of fact and conclusions of law;

NOW THEREFORE, 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, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended

IT IS HEREBY CERTIFIED that Federal Labor Union No. 18589 has been selected by a majority of the production employees of the Richards-Wilcox Manufacturing Company, Aurora, Illinois, as their representative for the purposes of collective bargaining, and that pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, Federal Labor Union No. 18589 is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

CHAIRMAN MADDEN took no part in the consideration of the above Decision and Certification of Representatives.