

In the Matter of Mergenthaler Linotype Company and United  
Electrical & Radio Workers of America, Linotype Local No.  
1222

*Case No. R-186*

*Linotype and Printing Equipment Manufacturing Industry—Election Ordered:* controversy concerning representation of employees: refusal by employer to recognize union as exclusive representative; rival organizations; substantial doubt as to majority status—*Units Appropriate for Collective Bargaining:* production employees; eligibility for membership in petitioning union; departmental timekeepers included in—*Certification of Representatives.*

*Mr. Lester Levin* for the Board.

*Gleason, McLanahan, Merritt & Ingraham*, by *Mr. Henry Clifton, Jr.*, of New York City, for the Company.

*Mr. Frank Scheiner*, of New York City, for United Electrical & Radio Workers of America, Linotype Local No. 1222.

*Mr. Jerome Y. Sturm*, of New York City, for International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8.

*Mr. Henry W. Lehmann*, of counsel to the Board.

DIRECTION OF ELECTIONS

*July 27, 1937*

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of employees of the Mergenthaler Linotype Company, Brooklyn, New York, and that:

(1) all the employees of the Company, including the departmental timekeepers, but excluding employees in Department N, and

(2) the employees in Department N, including the departmental timekeepers, but excluding from both groups the following classes of employees: executives, foremen, assistant foremen, supervisors, set-up men, employees in the engineering department, employees in the research and development department, time-study employees, employees in the main office and in the office of the matrix factory, and employees in classifications represented by the International Typographical Union, constitute, respectively, units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, and acting pursuant to the power vested in it by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations,—Series 1, as amended, hereby

DIRECTS that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with the Mergenthaler Linotype Company, Brooklyn, New York, elections by secret ballot shall be conducted within a period of fifteen (15) days after the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in the matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among the employees in each of said units, respectively, on the pay roll of the Company as of the date of this Direction, to determine in the case of the first unit above set forth, whether or not they desire to be represented by the United Electrical & Radio Workers, Linotype Local No. 1222, for the purposes of collective bargaining, and in the case of the second unit above set forth, whether they desire to be represented by the United Electrical & Radio Workers, Linotype Local No. 1222, or by the International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, for the purposes of collective bargaining.

CHAIRMAN MADDEN took no part in the consideration of the above Direction of Elections.

[SAME TITLE]

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

*September 1, 1937*

### STATEMENT OF CASE

On June 11, 1937, United Electrical & Radio Workers of America, Linotype Local No. 1222, herein called the Union, filed with the Regional Director for the Second Region (New York, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of the production employees of the Mergenthaler Linotype Company, Brooklyn, New York, herein called the Company, and requesting the National Labor Relations Board, herein called the Board, to conduct an investigation pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 6, 1937, the Union filed an amended petition which, in substance, states that (1) all the production employees of the Company, excluding employees in Department N, and (2) the production employees in Department N, but excluding from

both groups executives, foremen, assistant foremen, supervisors, set-up men, time-study employees, and employees in the main office and in the office of the matrix factory, constitute, respectively, units appropriate for purposes of collective bargaining. The amended petition further alleges that petitioner represents a majority of employees in each of the aforesaid units. On July 8, 1937, 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, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing. The Regional Director issued a notice of hearing to be held at New York City on July 9, 1937, copies of which were duly served upon the Company, the Union, the International Union of Polishers, Platers, Buffers, and Helpers, Local No. 8, the International Association of Machinists, and the International Typographical Union. Each of the three last afore-mentioned organizations are labor organizations named in the amended petition as claiming to represent some of the Company's employees.

Pursuant to the notice, a hearing was held at New York City on July 9, 1937, before Samuel Gusack, the Trial Examiner duly designated by the Board. The Board, the Company, the Union, and the International Union of Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, were represented by counsel and participated in the hearing. Neither the International Association of Machinists nor the International Typographical Union appeared at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties appearing. No motions or exceptions to rulings of the Trial Examiner were made during the course of the hearing.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of the employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of said Rules and Regulations—Series 1, as amended, issued a Direction of Elections on July 27, 1937, in which it was found that said employees constitute two separate and distinct units appropriate for the purposes of collective bargaining. Merely for the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

Pursuant to the Board's Direction of Elections, elections by secret ballot were conducted on August 10, 1937, by the Regional Director

for the Second Region among the production employees of the Company constituting the two bargaining units found appropriate by the Board. On August 11, 1937, the Regional Director issued and duly served upon the parties to the proceeding the Intermediate Report upon the secret ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot, the Regional Director reported the following:

I. Results of secret ballot for eligible employees except those employed in Department N:

Total number of employees eligible to vote.....	1,966
Total number of ballots cast.....	1,840
Total number of ballots for United Electrical & Radio Workers of America, Linotype Local No. 1222.....	1,218
Total number of ballots against United Electrical & Radio Workers of America, Linotype Local No. 1222.....	590
Total number of blank ballots.....	10
Total number of void ballots.....	4
Total number of challenged ballots.....	18

II. Results of secret ballot for eligible employees in Department N:

Total number of employees eligible to vote.....	37
Total number of ballots cast.....	37
Total number of ballots for United Electrical & Radio Workers of America, Linotype Local No. 1222.....	11
Total number of ballots for International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8.....	24
Total number of blank ballots.....	1
Total number of void ballots.....	0
Total number of challenged ballots.....	1

Upon the entire record in the case the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The Mergenthaler Linotype Company is a New York corporation, incorporated in 1895, having its executive offices in Brooklyn, New York. The Company manufactures and sells linotype machines, parts and matrices therefor, and other printing equipment and accessories. Its only manufacturing plant in the United States is in Brooklyn, New York. It has sales offices in Illinois, Louisiana, and California.

It was agreed by stipulation that the Company purchases gray iron and gray iron castings in the State of New York; both cast and rolled brass in the State of Connecticut; steel of miscellaneous shapes in the States of Connecticut, Pennsylvania, and New Jersey; aluminum in

the State of Pennsylvania; nuts, screws, and bolts in the States of New York and Connecticut; and miscellaneous articles in other States. Approximately 60.35 per cent of the raw materials purchased by the Company are purchased in the State of New York, and approximately 39.65 per cent of such materials are purchased in States other than the State of New York from whence they are shipped to the Company's plant in Brooklyn, New York. Approximately 88 per cent of the Company's finished products are shipped by it to States other than the State of New York.

The Company's vice president testified at the hearing that the Company employed 2,443 employees at its plant in Brooklyn, New York. The total factory pay roll for the year 1936 was \$2,743,785, and the gross business was \$7,047,099.79. The Company is the largest concern in the country engaged in manufacturing linotype equipment.

## II. THE ORGANIZATIONS INVOLVED

United Electrical & Radio Workers of America, Linotype Local No. 1222, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production workers in the plant of the Company at Brooklyn, New York, except supervisory and clerical employees.

The International Association of Machinists, the International Typographical Union, and the International Union of Polishers, Platers, Buffers, and Helpers are labor organizations named in the petition as claiming to represent some employees of the Company. The conditions of admission to membership in these organizations do not appear from the record.

## III. THE APPROPRIATE UNIT

As indicated above, it is claimed by the petitioner that (1) all the production employees of the Company, excluding employees in Department N, and (2) the production employees in Department N, but excluding from both groups executives, foremen, assistant foremen, supervisors, set-up men, time-study employees, employees in the engineering department, and employees in the main office and in the office of the matrix factory, constitute, respectively, units appropriate for purposes of collective bargaining. At the hearing all the parties present agreed to the description of the two bargaining units as set forth in the petition, except that in addition to the classes of employees therein excluded they also agreed to exclude from both units employees in the research and development departments and employees in classifications represented by the International Typographical Union.

The sole question is whether departmental timekeepers shall be included in the above bargaining units. The Union seeks to include the departmental timekeepers. The Company contends, however, that the timekeepers should not belong to the same organization as the production workers whose time they keep and whose wage is based upon the amount of time spent upon different operations. In support of its contention, the Company advances the argument that the organization of timekeepers in a bargaining unit with the production workers would encourage collusion and deception as to the amount of time spent upon particular operations with the design of fraudulently increasing the wages of the production workers involved. It is contended that the timekeepers represent management in the checking of the work of the production employees. Other considerations, however, persuade us to the view, as urged by the Union, that the timekeepers should be included in the groups for purposes of collective bargaining.

To avoid unnecessary expense and delay, the parties submitted an agreed statement describing the duties and responsibilities of the departmental timekeepers of the Company. The testimony at the hearing amplified this statement without contradicting it in any essential particulars. The agreed statement and the testimony describing the functions of the departmental timekeepers do not indicate that their duties are other than routine in character. Each production worker has a time card upon which the timekeeper records the time spent upon each job either at the end of the particular job or on Friday at closing time. The time is also recorded upon a master sheet. This is transferred to the bookkeeping department and to the treasurer's office where the wages earned by each production worker are computed. The time cards here described are to be distinguished from the time cards punched by the employees when they arrive at and leave work. The time appearing on these cards must correspond to the time recorded by the timekeepers. A foreman of timekeepers maintains supervision over their work. Like other employees they are hired and discharged by the employment manager. Although they are paid upon a weekly salary basis, it was testified at the hearing that their salary varies from \$18 to \$30 per week, which is less than that received by certain types of production employees. It does not appear that they in any way supervise the work of the production employees.

Other persuasive factors must be taken into consideration. The departmental timekeepers are eligible for membership in the Union. The Union claims, and this was not contradicted, that of approximately 51 departmental timekeepers employed by the Company, 35

had, at the time of the hearing, applied for membership in the Union. Moreover, in the manufacturing plants of other companies with which the Union has agreements, timekeepers are admitted to membership. It was also testified that timekeepers have in some instances been admitted to membership in the International Association of Machinists, although this practice is not common.

The nature of the duties of the timekeepers, their organization in other manufacturing plants in locals of the United Electrical & Radio Workers, their eligibility to membership in the Union, all compel us to take the view that the departmental timekeepers should be included in the two bargaining units. In order to insure to the employees of the Company the full benefit of their right to organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that:

(1) all the employees of the Company, including the departmental timekeepers, but excluding employees in Department N, and

(2) the employees in Department N, including the departmental timekeepers, but excluding from both groups the following classes of employees: executives, foremen, assistant foremen, supervisors, set-up men, employees in the engineering department, employees in the research and development department, time-study employees, employees in the main office and in the office of the matrix factory, and employees in classifications represented by the International Typographical Union, constitute, respectively, units appropriate for the purposes of collective bargaining.

#### IV. QUESTION CONCERNING REPRESENTATION

The Union claims to represent a majority of employees in each of the bargaining units. In the petition it was alleged that the International Association of Machinists, the International Typographical Union and International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, each claim to represent some employees of the Company. It was agreed that both the Union and International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, represent a substantial number of employees in the unit composed of production employees in Department N of the Company. The Company has refused to grant the Union the exclusive right to bargain collectively with it on behalf of its employees in the first unit until an election by secret ballot has been held to determine whether the Union represents a majority in this unit. The Company also refuses to grant the Union the exclusive right to bargain collectively with it on behalf of its employees in Department N until an election by secret ballot has been held to

determine whether the Union or International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, represents a majority of employees in this unit.

Upon the basis of these facts we find that a question has arisen concerning the representation of the production employees of the Company in both units.

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

We find that the question of representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, 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 of fact, the Board makes the following conclusions of law:

1. The following constitute two separate and distinct units appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act:

(1) all the employees of the Company, including the departmental timekeepers, but excluding employees in Department N, and

(2) the employees in Department N of the Company, including the departmental timekeepers, but excluding from both groups the following classes of employees: executives, foremen, assistant foremen, supervisors, set-up men, employees in the engineering department, employees in the research and development department, time-study employees, employees in the main office and in the office of the matrix factory, and employees in classifications represented by the International Typographical Union.

2. A question affecting commerce has arisen concerning the representation of the employees in each of the aforesaid units, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

#### CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that:

1. United Electrical & Radio Workers of America, Linotype Local No. 1222, has been selected by a majority of the employees of the Mergenthaler Linotype Company, including the departmental timekeepers, but excluding employees in Department N, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, United Electrical & Radio Workers of America, Linotype Local No. 1222, 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; and

2. International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, has been selected by a majority of the employees in Department N of the Mergenthaler Linotype Company, including the departmental timekeepers, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Union, Metal Polishers, Platers, Buffers, and Helpers, Local No. 8, 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; but excluding from both bargaining units the following classes of employees: executives, foremen, assistant foremen, supervisors, set-up men, employees in the engineering department, employees in the research and development department, time-study employees, employees in the main office and in the office of the matrix factory, and employees in classifications represented by the International Typographical Union.