

In the Matter of FEDDERS MANUFACTURING COMPANY and LODGE
No. 1753, AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN
WORKERS OF NORTH AMERICA, THROUGH THE STEEL WORKERS
ORGANIZING COMMITTEE

Case No. B-258.—Decided October 15, 1937

Automobile and Refrigeration Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; rival organizations; substantial doubt as to majority status; refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* production employees; salaried and supervisory employees excluded—*Election Ordered*

Mr. Norman F. Edmonds for the Board.

Mr. John W. Van Allen, of Buffalo, N. Y., for the Company.

Mr. Daniel B. Shortal, of Buffalo, N. Y., for the Amalgamated.

Mr. Stephen L. Verdi, of Buffalo, N. Y., for the Employees' Labor Organization.

Mr. Martin Kurasch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 12, 1937, the Steel Workers Organizing Committee, herein called the S. W. O. C., filed with the Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of the production employees of the Fedders Manufacturing Company, Buffalo, New York,¹ herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 18, 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.

¹ It appears from the record that the correct name of the Company is Fedders Manufacturing Company, Inc.

On August 23, 1937, the Regional Director issued a notice of hearing to be held at Buffalo, New York, on August 30, 1937. Copies were served upon the Company, the S. W. O. C., and the Employees' Labor Organization of the Fedders Manufacturing Company, herein called the E. L. O., which had been named in the petition as also claiming to represent the employees. Pursuant to the notice, a hearing was held on August 30, 1937, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. At the hearing, the attorney for the Board and the attorney for the S. W. O. C. moved to amend the petition, the notice of hearing, and the subpoena served upon the Company, by substituting for the words "Steel Workers Organizing Committee" the words "Lodge No. 1753, Amalgamated Association of Iron, Steel and Tin Workers of North America through the Steel Workers Organizing Committee." The motion was granted. This union will herein be called the Amalgamated.

The Company, the Amalgamated, and the E. L. O. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties.

The Board has reviewed the rulings of the Trial Examiner upon the various motions and objections made by counsel for the parties and finds that no prejudicial errors were committed. His rulings are hereby affirmed. Upon the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

The Company, located at Buffalo, New York, manufactures automobile radiators, electric refrigeration parts, air-conditioning parts and appliances, heat transfer appliances and electric water-coolers. In the manufacture of these various products the Company uses copper, brass, steel, tin, lead, and small amounts of numerous other items. It purchases fabricated copper from fabricating mills located at Buffalo and Rome, New York, Cleveland, Ohio, Detroit, Michigan, and Bridgeport, Connecticut. In the year 1936, the Company purchased \$2,428,567.52 worth of copper and brass, of which \$300,000 worth was purchased outside the State of New York, and for the period of January 1, 1937 to July 31, 1937, the value of brass and copper purchased was \$1,738,574.63, of which \$265,000 worth was purchased outside of New York. All of the steel comes from states other than New York. In 1936, the Company bought \$186,370.27 worth of steel, and from the period of January 1, 1937 to July 31, 1937, it bought \$140,522.01 worth of steel. All of the tin is purchased from states other than New York. The Company

buys the tin, lead, and other materials that are used to make up solder, and gives them to the fabricator or smelter in the quantities required by the various formulae for solder. All of these fabricators are outside of New York. In 1936, the Company purchased \$575,648.06 worth of solder and from January 1, 1937 to July 31, 1937, the value of solder purchased was \$405,864.90.

The Company has branch warehouses in Massachusetts, Georgia, Ohio, Michigan, Illinois, Texas, and California. Sales offices are maintained at each of these warehouses. The bulk of the automobile radiators manufactured by the Company is sent to Michigan, Indiana, and California. Some are exported. The air-conditioning parts are shipped, through the manufacturing and jobbing trade, to Michigan, Ohio, Pennsylvania, Georgia, Texas, California, Missouri, and Illinois. Some are sold to purchasers in New York. Unit heaters are sold, through the jobbing and contracting trade, all over the country. Electric water-coolers are shipped to various parts of the United States. From January 1, 1936 to July 31, 1937, the total sales of the Company were \$10,139,616.82. About 90 per cent of this total represents shipments to points outside New York. Outgoing shipments are made by rail. The incoming shipments are generally made by truck.

The Company has registered stock issues with the Securities and Exchange Commission for sale in interstate commerce and has registered a trade mark with the United States Patent Office for sale of articles in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

A. *The Amalgamated*

Lodge No. 1753, Amalgamated Association of Iron, Steel, and Tin Workers of North America, is a labor organization affiliated with the Committee for Industrial Organization, which admits to membership the production employees of the Fedders Manufacturing Company. Lodge 1753 was chartered on May 5, 1937.

B. *The E. L. O.*

The Employees' Labor Organization of the Fedders Manufacturing Company was organized in the latter part of May 1937. Its constitution, adopted June 22, 1937, states as one of its objectives: "To provide a collective bargaining agency to negotiate with and enter into contracts with the Company for the members of the organization regarding wages, hours of work, conditions of employment, and other matters of mutual interest to employees and an employer." It is a labor organization admitting to membership the production employees of the Company.

III. THE APPROPRIATE UNIT

The plant consists of two buildings connected by a bridge. The production work is carried on in all of one building and part of another; the office is in the latter building. For accounting and pay roll purposes, the Company has divided the plant into numerous departments, numbered from 10 to 77. There is no great differentiation of wages among these departments. Workers have been shifted from one department to another. Neither labor organization makes any distinction between departments, and both purport to represent the workers as a whole.

The E. L. O. draws the line sharply between salaried and non-salaried employees and seeks to represent only the latter. The Amalgamated also excludes salaried employees, and it excludes in addition various other types of employees.

At the hearing both unions agreed that salaried employees should not be considered as part of the appropriate unit. It was understood that draftsmen, nurses, and watchmen are salaried employees. There was no objection to statements by the Trial Examiner of his understanding of the agreement as excluding also engineers, shipping clerks, department clerks, clerical workers under foremen in the shop, office employees, foremen and assistant foremen, and anyone in a supervisory capacity. There was some uncertainty as to janitors and porters. Since they are akin to other excluded classes in that they are not engaged directly in the processes of production, they will also be excluded. Edmund Kopan, the stockroom helper, who is president of the E. L. O., is to be included in the appropriate unit.

On the pay roll in the record, there appears the name of Joseph W. Jagosz, followed by the notation, "—repair man—Detroit, Michigan." Although he may work at Buffalo from time to time, his main duties are as a repairman, in the Detroit, Michigan, office. He will not be included in the appropriate unit.

In view of all these facts and in order to insure to the production employees of the Fedders Manufacturing Company the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all of the production employees of the Company, excluding foremen, assistant foremen and others in supervisory capacities, office workers, janitors, porters, shipping clerks, department clerks, clerks under foremen in the shop, engineers, draftsmen, nurses, watchmen, and all other salaried employees, and excluding the repairman at the Detroit, Michigan, warehouse, but including the stockroom helper, constitute a unit appropriate for the purposes of collective bargaining.

IV. THE QUESTION CONCERNING REPRESENTATION

Both unions assert that they represent a majority of the employees. Approximately 875 workers are included in the appropriate categories. The Amalgamated presented a box containing 432 cards. The E. L. O. presented a ledger which contained 475 names, asserted to be names of members of the E. L. O. The E. L. O. also presented a set of petitions on which employees had signified their desire to be represented by the E. L. O. Both the Amalgamated and the E. L. O. offered this evidence for inspection by the Board only.

Many names appear both on the list of the E. L. O. and on the cards of the Amalgamated. An examination of the petitions presented by the E. L. O. reveals that they vary widely in their heading and indicates that the presence of the signatures on the petition is not conclusive as to the desires of the signers with respect to having the E. L. O. represent them for purposes of collective bargaining.

On June 23, 1937, the Amalgamated presented to T. C. Fedders, vice president of the Company, a proposed contract in writing. At that time Fedders said he was perfectly willing to bargain and to discuss the signing of an agreement. At a second meeting on June 27 or June 28, 1937, the clause as to exclusive bargaining rights was sent to the Company's attorney for examination, and the discussion of the demands as to wages was deferred. Other matters, such as hours, seniority, and procedure for adjustment of grievances, were agreed upon. At a third meeting on July 11, 1937, the Company refused to grant sole bargaining rights to the Amalgamated or to examine any evidence of a majority which the Amalgamated might present. The Amalgamated immediately thereafter filed with the Board its petition for investigation and certification of representatives. At a fourth meeting the Company refused to sign an agreement which would embody the other matters agreed upon, but would leave the question of sole bargaining rights to be settled by a Board election.

On the basis of these facts, and upon the whole record, we find that a question has arisen concerning the representation of the production employees of the Fedders Manufacturing Company.

V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning 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.

VI. CONDUCT OF THE ELECTION.

We further find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation.

The Company is engaged in a seasonal business. No new employees were hired during July or August. Employees laid off in June, will, in accordance with the general policy of the Company, be put back to work when needed. The names of these employees are included in the list of employees which is designated by the Company as the pay-roll list for July 11, 1937. The election will be held among the designated classes of employees listed on the pay-roll list of July 11, 1937.

CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

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

2. All of the production employees of the Company, excluding foremen, assistant foremen and others in supervisory capacities, office workers, janitors, porters, shipping clerks, department clerks, clerks under foremen in the shop, engineers, draftsmen, nurses, watchmen and all other salaried employees, and excluding the repairman at the Detroit, Michigan office, but including the stockroom helper, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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, 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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with the Fedders Manufacturing Company, an election by secret ballot shall be conducted within 20 days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the production employees of the Fedders Manufacturing Company, who appear on

the pay-roll list of July 11, 1937, excluding foremen, assistant foremen and others in supervisory capacities, office workers, janitors, porters, shipping clerks, department clerks, clerks under foremen in the shop, engineers, draftsmen, nurses, watchmen, and all other salaried employees, and excluding the repairman at the Detroit, Michigan office, but including the stockroom helper, to determine whether they desire to be represented by Lodge 1753, Amalgamated Association of Iron, Steel, and Tin Workers, affiliated with the Committee for Industrial Organization, or the Employees' Labor Organization of the Fedders Manufacturing Company, for the purposes of collective bargaining, or by neither.