

In the Matter of MARLIN-ROCKWELL CORPORATION and LOCAL NO.  
338, UNITED AUTOMOBILE WORKERS OF AMERICA

*Case No. R-342.—Decided February 11, 1938*

*Ball Bearings Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize and bargain with petitioning union—*Unit Appropriate for Collective Bargaining.* all employees, including set-up men and laboratory men; eligibility for membership in only organization among employees; community of interest—*Election Ordered*

*Mr. Peter J. Crotty, Mr. Edward D. Flaherty, and Mr. Gerhard Van Arkel, for the Board.*

*Slee, O'Brian, Hellings & Ulsh, by Mr. Dana B. Hellings, of Buffalo, N. Y., for the Company.*

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

*Mr. A. Bruce Hunt, Jr., of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 5, 1937, International Union United Automobile Workers of America, Local No. 338,<sup>1</sup> herein called the Union, 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 employees of Marlin-Rockwell Corporation, Jamestown, New York, 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 September 24, 1937, the Union filed an amended petition. On September 21, 1937, the National Labor Relations Board, herein called 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, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

<sup>1</sup> Although the petition was signed "International Union United Automobile Workers of America By: George S. Wilson", it is clear from the record that the proceedings throughout were on behalf of the Local, rather than the International Union.

On September 28, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice and to an amended notice of hearing duly served upon the Company, a hearing was held on October 18 and 19, 1937, at Jamestown, New York, before Charles E. Persons, the Trial Examiner duly designated by the Board. Although the record in this case does not show that a copy of the amended notice was served upon the Union, it appeared at the hearing. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On October 14, 1937, counsel for the Company filed with the Board a motion for a subpoena *duces tecum*, the purpose of which was to enable said counsel to obtain "all books of record, membership lists, membership records, books of account, financial records, minute books, by-laws, and correspondence" of the Union. On October 16, 1937, the Board denied the motion. At the hearing, the motion was renewed, and the same is hereby denied.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY <sup>2</sup>

The Company, a Delaware corporation, has its principal office and place of business in Jamestown, New York. The Company manufactures and sells ball bearings, for which purpose it maintains two plants, one at Jamestown, New York, and the other at Plainville, Connecticut. We are here concerned only with the Jamestown plant, at which the Company normally employs in excess of 450 persons.

During the year 1936, approximately 2700 tons of raw materials, principally steel tube, bar stock, forging, strip steel, steel balls, and ball stock, valued at approximately \$675,800 were shipped to the Jamestown plant, approximately 90 per cent of the shipments being made from Ohio, Pennsylvania, Connecticut, and Illinois.

During the year 1936, the Company manufactured at its Jamestown plant approximately 1634 tons of ball bearings, valued at about \$2,600,000. Approximately 75 per cent of the ball bearings were

<sup>2</sup>The facts set forth in this section are obtained partly from the testimony at the hearing, but principally from a stipulation entered into by counsel for all parties to this proceeding, filed as Board Exhibit No. 2.

shipped outside of the State of New York, principally to customers in Ohio, Pennsylvania, Missouri, Wisconsin, Michigan, Connecticut, and Illinois. The main customers of the Company are automobile manufacturing concerns, which purchase approximately 60 per cent of the Company's products.

The Company employs 17 salesmen, who travel throughout the United States and solicit orders which are sent to the Jamestown plant to be filled. The Company advertises in the American Machinist and other mechanical magazines of nation-wide circulation.

## II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers of America is a labor organization affiliated with the Committee for Industrial Organization. Local No. 338 apparently admits to its membership all production and maintenance employees of the Company, excluding those employees in clerical, supervisory, executive, and sales positions.

## III. THE QUESTION CONCERNING REPRESENTATION

On July 26, 1937, a committee representing the Union called upon officials of the Company and endeavored to obtain recognition of the Union as the bargaining representative of the production and maintenance employees of the Company. At this time no concrete evidence of membership in the Union was offered to officials of the Company and recognition was refused. On or about September 3, 1937, after the consent election discussed in Section VI below, the Union again endeavored to obtain such recognition from the Company and again was refused. The position of the Company is that the Union has never proved that it represents a majority of the production and maintenance employees.

We find that a question has arisen concerning representation of the employees of the Company.

## IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON 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.

## V. THE APPROPRIATE UNIT

In the amended petition filed on September 24, 1937, the Union alleges that all "employees except those in supervisory, clerical, execu-

tive, or sales positions" constitute an appropriate bargaining unit. At the hearing, the Union asked that set-up men, apprentices, laboratory workers, and two employees by the names of Burr and Williams also be excluded from the unit.

Normally, the duties of the set-up men, numbering approximately 30, are to "set-up" the machines which are operated by the production employees. The set-up men are paid on an hourly basis, whereas the production employees are paid on a piece-work basis. The set-up men are among the oldest and most experienced employees and were at one time machine operators. The record indicates, however, that notwithstanding certain differences between the set-up men and other production employees, the interests of the set-up men are closely associated with those of the other employees. That the Union has recognized such a community of interests is shown by the fact that the set-up men are eligible to membership in the Union and some of them have become members thereof. Indeed, the objection of the Union to the inclusion of the set-up men in the bargaining unit was apparently upon the basis of a mistaken impression that such employees have the authority to hire and fire. We conclude, therefore, under all the facts that the set-up men should be included in the bargaining unit.

The apprentices, numbering five or six, are employed under a contract between the Company, the State Department of Education, the Jamestown Board of Education, and the guardian of the particular apprentice. Under the contract, the Company agrees to employ the apprentice for a maximum period of four years or 8,000 hours of work at a stipulated rate of pay, which is altered each six months, and also agrees to instruct the apprentice in the mechanics of his particular trade. We feel the apprentices should be excluded from the bargaining unit.

The laboratory men, numbering seven, examine the raw materials before they are used in production. Although some of them possess college training, the record indicates that such examination requires no particular skill or training and that ordinary workers are able to do the examining. Although the record does not show that the laboratory men have joined the Union, they are apparently eligible to its membership. We feel, therefore, that they should be included in the bargaining unit.

Burr examines shipments which are returned to the Company by its customers as defective. Williams examines the gauges used by the machine operators to check the accuracy of the production machines. The record does not show that either Burr or Williams supervises the work of any employees. Objection of the Union to the inclusion of these men within the bargaining unit seems to have been based on a mistaken impression that they possessed the power to employ

or discharge workers or that it was their duty to recommend discharges. Accordingly, they will be included in the bargaining unit.

The engineers and draftsmen employed by the Company are eligible to membership in the Federation of Architects, Engineers, Chemists, and Technicians, and their duties more closely relate them to the management than to the other workers. They are essentially technical or clerical employees and will be excluded from the bargaining unit.

We find that all the employees of the Company at its Jamestown, New York, plant, excluding supervisory, clerical, executive, and sales employees, engineers, draftsmen, and apprentices, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

On or about August 10, 1937, the Company and the Union agreed to hold a consent election at the Company's plant for the purpose of determining whether the Union represented a majority of the production and maintenance employees of the Company. It was agreed that the election should be held on August 21, 1937, from 11:30 a. m. to 3:30 p. m. and that the election should be conducted under the direction of a representative of the Board. It was also agreed that all production and maintenance employees on the Company's pay roll as of August 14, 1937, exclusive of foremen, engineers, draftsmen, chief inspectors, three laboratory men, clerical employees, office employees, salesmen, and timekeepers, would be eligible to vote at the election.

The result of the election is shown by the Union's Exhibit No. 13, as follows:

Total number eligible to vote.....	429
Total number ballots counted.....	334
Total number of votes in favor of the Union.....	202
Total number of votes against the Union.....	129
Total number of void ballots.....	3

The Union thus failed by 13 votes to obtain a majority of the employees eligible to vote, 95 of such employees failing to vote. The Union claimed at the hearing that all or most of the 95 employees failed to vote because the polls did not open until 1 p. m. due to the unavoidable tardiness of the representative of the Board under whose direction the election was conducted. The record indicates that a large number of employees who would otherwise have done so failed to vote on account of delay in the opening of the polls. It should also be noted that the employees who were eligible to vote at the consent election differ somewhat from the employees in the unit which we

find appropriate for collective bargaining purposes. We are, under the circumstances, unable to certify representatives on the basis of the results of the consent election. Nor has the Union proved by other evidence that it represents a majority of the employees in the appropriate unit.

We find, therefore, that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot. All employees within the appropriate unit on the pay roll as of September 24, 1937, the date of the amended petition, shall be eligible to vote.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Marlin-Rockwell Corporation, Jamestown, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Company at its Jamestown, New York, plant, excluding supervisory, clerical, executive, and sales employees, engineers, draftsmen, and apprentices, 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, 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 a part of the investigation ordered by the Board to ascertain representatives for the purpose of collective bargaining with Marlin-Rockwell Corporation, Jamestown, New York, an election by secret ballot shall be conducted within fifteen (15) 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, among all the employees of the Company who were employed at the Jamestown, New York, plant as shown on the pay roll as of September 24, 1937, excluding those who have since quit or been discharged for cause and excluding clerical, supervisory, executive, and sales employees, engineers, draftsmen, and apprentices, to determine whether or not they desire to be represented by the United Automobile Workers of America, Local No. 338, for the purposes of collective bargaining.