

In the Matter of NATIONAL SEWING MACHINE COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL MOLDERS UNION, and METAL POLISHERS INTERNATIONAL UNION

Case No. R-568.—Decided February 17, 1938

Sewing Machine Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal of employer to recognize petitioning unions because of prior recognition of rival organization—*Units Appropriate for Collective Bargaining:* (1) foundry employees; (2) polishing and plating department employees; (3) all other production and maintenance employees; no controversy among three petitioning labor organizations, each claiming to represent a separate unit; history of collective bargaining relations in industry; desires of men—*Representatives:* proof of choice: membership in unions; comparison of pay roll with union lists—*Certification of Representatives:* upon proof of majority representation.

Mr. Stephen M. Reynolds, for the Board.

Scott, MacLeish & Falk, by *Mr. Joseph W. Townsend*, of Chicago, Ill., for the Company.

Mr. Charles White, of Chicago, Ill., for the Polishers' Union.

Mr. A. G. Skundor, of Belvidere, Ill., for the Machinists' Association.

Mr. Albert S. O'Sullivan, of Belvidere, Ill., for the Employees' Council.

Mr. David Rath, of Peoria, Ill., for the Molders' Union.

Mr. Abraham J. Harris, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On October 15, 1937, International Association of Machinists, herein called the I. A. M., International Molders' Union of North America,¹ herein called the Molders' Union, and Metal Polishers, Buffers, Platers, and Helpers International Union,² herein called the Polishers' Union, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees

¹ Incorrectly named in the Petition as "International Molders Union."

² Incorrectly named in the Petition as "Metal Polishers Intl. Union."

of National Sewing Machine Company, Belvidere, Illinois, 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 November 8, 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.

On December 2, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the I. A. M., the Molders' Union, the Polishers' Union, and the National Sewing Machine Company Employees' Council, herein called the Employees' Council, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 9, 1937, at Chicago, Illinois, before James Gibson Ewell, the Trial Examiner duly designated by the Board. The Board, the Company, and the Employees' Council were all represented by counsel, and the I. A. M., the Molders' Union, and the Polishers' Union were represented by their duly authorized representatives. All 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is engaged in the manufacture and sale of sewing machines, washing machines, and automobile heaters, and in a general contract business in the manufacture of screw machine products and assemblies. Its plant is located at Belvidere, Illinois. The principal raw materials used in its plant are pig iron, steel, lumber, motors, and washing machine attachments. Approximately 60 per cent of them come from the States of Pennsylvania, Connecticut, Wisconsin, Alabama, Ohio, and Indiana, the remaining 40 per cent coming from within the State of Illinois. Approximately 75 per cent of the Company's products are shipped to States other than Illinois and to seven foreign countries. Jobbers, mail-order houses, and department

stores throughout the United States handle the Company's products.

Raw materials received by the Company are worth approximately \$1,200,000 per annum. The Company's sales in the same period aggregate approximately \$2,500,000.

II. THE ORGANIZATIONS INVOLVED

International Molders' Union of North America is a labor organization affiliated with the American Federation of Labor, admitting to its membership all the molders, core makers, and foundry help employed by the Company, excluding office workers and clerical and supervisory employees.

Metal Polishers, Buffers, Platers, and Helpers International Union is a labor organization affiliated with the American Federation of Labor, admitting to its membership all metal polishers, buffers, platers, and helpers in the polishing and plating department of the Company's factory, excluding supervisory employees.

International Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to its membership, according to the financial secretary of its local organization, all employees of the Company, excluding those in the foundry and polishing and plating department, office workers, and clerical and supervisory employees.

National Sewing Machine Company Employees' Council is a labor organization admitting to its membership all employees of the Company, excluding foremen, office employees, and stockholders.

III. THE QUESTION CONCERNING REPRESENTATION

During the fall of 1937, the Molders' Union, I. A. M., and Polishers' Union carried on an organization campaign among the Company's employees which culminated on October 5, 1937, in a request to the Company to recognize the three organizations as the exclusive bargaining agencies respectively for the employees they claimed to represent.

These membership claims overlap and conflict with the membership claim of the Employees' Council. That organization was formed in May 1937. The only qualification for membership therein, aside from that of being a Company employee, was the payment of 25 cents dues monthly. The Council's dues records showed that paid membership diminished from 579 members in June, to 473 in July, to 254 in August.³ Despite the Employees' Council's apparent lack

³ The Company's pay roll of October 10, 1937, contained 557 names, excluding clerical and supervisory employees. There is nothing in the record to show that there were fewer employees than that in August. It is evident that in August the Employees' Council's membership was less than a majority of the Company's non-clerical, non-supervisory employees.

of a majority membership, the Company recognized it as the employees' exclusive collective bargaining representative. The only two attempts of the Employees' Council to bargain collectively with the Company were made in August and were fruitless. With a history of a dwindling membership and unavailing attempts at collective bargaining, the Employees' Council, in September, voted to suspend dues and further operations.

Thereafter, on October 5, 1937, the three petitioning organizations sought the Company's recognition. The Company refused to recognize these organizations on the ground that recognition had already been granted to the Employees' Council.

We find that a question has arisen concerning representation of 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 with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNITS

At the hearing, the respective witnesses for the Molders' Union, the Polishers' Union, and the I. A. M. contended that appropriate units are (1) the foundry employees, excluding office workers and clerical and supervisory employees, (2) the polishing and plating department employees, excluding office workers and clerical and supervisory employees, and (3) all other production and maintenance employees of the Company, excluding office workers and clerical and supervisory employees. Thus, the I. A. M. claims an industrial unit, but is agreeable to recognizing the jurisdiction of the two claimant craft unions.

The employees here engaged in the foundry and in the polishing and plating department have historically been recognized as separate crafts, and the Molders' Union and the Polishers' Union have long engaged in collective bargaining on behalf of such employees upon such a craft basis. Here no other active labor organization claims to represent such employees and the employees themselves, as we find below, have expressed the desire to be represented upon such a basis. Under such circumstances we consider the units requested by the petitioning unions to be appropriate.

We find that the molders, core makers, and foundry help employed by the Company, excluding office workers and clerical and super-

visory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to such employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

We find that the metal polishers, buffers, platers, and helpers employed by the Company in its polishing and plating department, excluding office workers and clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to such employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

We find that the production and maintenance employees of the Company, excluding clerical and supervisory employees, and excluding the employees enumerated in the two preceding paragraphs constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to such employees 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

At the hearing, there was put into evidence the pay-roll list of the Company as of October 10, 1937, excluding foremen, office employees, clerks, and supervisory employees. This contained 557 names, of which 135 employees were in the foundry unit of the Company, 39 employees in the polishing and plating unit, and the remainder in the third unit hereinabove described in Section V.

The Molders' Union submitted a list of 120 members in the foundry unit. Its financial secretary testified that the list was compiled from the paid memberships in that unit. The Polishers' Union similarly submitted a list of 32 members in the polishing and plating unit and submitted for inspection during the hearing the 32 original membership application cards involved. It was testified that three of the seven nonmembers in the polishing unit had requested the Polishers' Union to bargain for them with the Company. The I. A. M. similarly submitted a list of 200 paid members in the third unit hereinabove described in Section V, and, in addition, a list of 22 applications for membership, six of which, it was testified, were partly paid. These membership lists were admitted in evidence without objection and were checked against the Company's pay roll.

On the contrary, the proof of membership offered by the Employees' Council was self-negating. No list of members for comparison with the Company's pay roll or otherwise was introduced. As pointed out in Section III, hereinabove, whatever membership the Council had once had, had rapidly dwindled to such a point that it had decided to suspend activities.

We find that the Molders' Union has been designated and selected by a majority of the employees in the first appropriate unit above described in Section V as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

We find that the Polishers' Union has been designated and selected by a majority of the employees in the second appropriate unit above described in Section V as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

We find that the I. A. M. has been designated and selected by a majority of the employees in the third appropriate unit above described in Section V, as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 National Sewing Machine Company, Belvidere, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The molders, core makers, and foundry help employed by the Company, excluding office workers and clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. International Molders' Union of North America is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

4. The metal polishers, buffers, platers, and helpers employed by the Company in its polishing and plating department, excluding office workers and clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

5. Metal Polishers, Buffers, Platers, and Helpers International Union is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

6. The production and maintenance employees of the Company, excluding clerical and supervisory employees, and excluding the employees enumerated in paragraphs 2 and 4, hereinabove, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

7. International Association of Machinists is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Molders' Union of North America has been designated and selected by a majority of the molders, core makers and foundry help employed by National Sewing Machine Company, Belvidere, Illinois, excluding office workers and clerical and supervisory employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Molders' Union of North America 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

IT IS HEREBY CERTIFIED that Metal Polishers, Buffers, Platers, and Helpers International Union has been designated and selected by a majority of the metal polishers, buffers, platers, and helpers employed by National Sewing Machine Company, Belvidere, Illinois, in its polishing and plating department, excluding office workers and clerical and supervisory employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Metal Polishers, Buffers, Platers, and Helpers International Union 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

IT IS HEREBY CERTIFIED that International Association of Machinists has been designated and selected by a majority of the production and maintenance employees of National Sewing Machine Company, Belvidere, Illinois, excluding office workers and clerical and supervisory employees and excluding the employees enumerated in the two immediately preceding paragraphs of this Certification, as

their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Association of Machinists 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.

[SAME TITLE]

SUPPLEMENTAL DECISION

AND

ORDER

March 10, 1938

On February 17, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Certification of Representatives in the above-entitled case by which the three petitioning unions therein, International Molders' Union of North America, herein called the Molders' Union, Metal Polishers, Buffers, Platers, and Helpers International Union, herein called the Polishers' Union, and International Association of Machinists, herein called the I. A. M., were certified as the exclusive representatives of the employees of National Sewing Machine Company, Belvidere, Illinois, herein called the Company, in the units decided by the Board to be appropriate, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. In its Decision the Board found that the National Sewing Machine Company Employees' Council, herein called the Employees' Council, a labor organization claiming to represent employees directly affected by the investigation, did not represent a majority of such employees.

Thereafter, pursuant to notice served upon the counsel for or representatives of the Company, the I. A. M., the Molders' Union, the Polishers' Union, and upon the Board, counsel for the Employees' Council presented a petition to the Board on March 10, 1938, by which petition the Employees' Council requested a rehearing of the case. On the same day oral argument was had before the Board, participated in by counsel for the Employees' Council, the Company, and the I. A. M.

The petition presented to the Board finds fault with the Board's Decision and Certification of Representatives, in the main on the basis that the facts as found by the Board in the record of the case do not reflect the true situation, and prays for a rehearing for the presentation of evidence to show the facts. No claim is made that the Board's Decision is not supported by the record. The claim is that the record inadequately presents the Employees' Council's case.

At the hearing the Company and the Employees' Council were both represented by counsel, participated in the hearing, and were given full opportunity to be heard, to examine and cross-examine the witnesses, and to introduce evidence bearing on the issues. There appeared as witnesses in the case, among others, the president of the Company and the president and three other officials of the Employees' Council. These were the persons best informed as to the extent to which the Employees' Council represented the Company's employees. Not one of these persons testified as to one word of the evidence which the Employees' Council now states it would introduce if granted a rehearing. Furthermore, there is no showing of any sort that any of the evidence so sought to be introduced is newly discovered. On the contrary, the proposed evidence in its very nature must have been known to at least some of the witnesses who testified for the Employees' Council and the Company, for example, evidence concerning collective bargaining activity now claimed in the petition to have been carried on by the Employees' Council during the time the hearing was held. It is incredible that had this been a fact no one would have said anything about it in his testimony.

The petition of the Employees' Council will therefore be denied and the certification of the Molders' Union, the Polishers' Union, and the I. A. M. as the exclusive representatives of the employees in the units decided by the Board to be appropriate will be affirmed.

ORDER

The National Labor Relations Board hereby:

1. Orders that the petition of National Sewing Machine Company Employees' Council be, and it hereby is, denied;
2. Affirms the Certification of Representatives made by the Board in the above-entitled case on February 17, 1938.

Mr. DONALD WAKEFIELD SMITH took no part in the consideration of the above Supplemental Decision and Order.