

In the Matter of NORTH STAR SPECIALTY CO. and INTERNATIONAL
ASSOCIATION OF MACHINISTS, LOCAL 382

Case No. R-466.—Decided March 3, 1938

Metal Products Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; substantial doubt as to majority status; strike provoked by employer's delay in recognizing intervening union as exclusive representative—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, including production worker with some supervisory duties; experimental worker excluded on stipulation by both unions—*Election Ordered:* eligibility to vote determined as of day preceding strike.

Mr. Thurlow Smoot, for the Board.

Mr. R. C. Stephan, of Minneapolis, Minn., for the Company.

Mr. W. A. Heath, of Minneapolis, Minn., for the I. A. M.

Mr. Ralph L. Helstein, of Minneapolis, Minn., for the United.

Mr. Richard A. Perkins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 20, 1937, International Association of Machinists, Local 382, herein called the I. A. M., filed with the Regional Director for the Eighteenth Region (Minneapolis, Minnesota) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of North Star Specialty Manufacturing Co.,¹ Minneapolis, Minnesota, 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 9, 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 November 29, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the I. A. M., and upon United Electrical, Radio, and Machine Workers of America, Local 1139, herein called the United, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 13, 1937, at

¹ The petition incorrectly designated the Company as "North Star Specialty Co."

Minneapolis, Minnesota, before J. J. Fitzpatrick, the Trial Examiner duly designated by the Board. The Board and the United were represented by counsel, the I. A. M. by one of its officials, and the Company by its secretary. 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

North Star Specialty Manufacturing Co., a Minnesota corporation, manufactures portable refrigerators, humidifiers, glass washers, and merchandise display racks and executes special orders for machine and metal work at its plant in Minneapolis, Minnesota. Processes carried on at the plant include cutting, shaping, welding, painting, polishing, and packing. Raw materials used by the Company include sheet metal, machined castings, band iron, angle iron, aluminum, copper, rubber, and cotton textiles. The Company obtains some of its raw materials from Illinois, New York, and Pennsylvania.

The Company solicits business by mail in all parts of the United States and Canada. In the year 1936 the Company's gross sales amounted to \$80,856.19. Goods to the aggregate value of \$25,141.29, or approximately 31 per cent of the total, were shipped out of Minnesota to customers in every other State, the District of Columbia, and Canada.

There is a seasonal fluctuation in the number of employees at the plant operated by the Company. The normal pay roll includes 21 production workers and 3 clerical employees.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Local 382, is a labor organization affiliated with the American Federation of Labor, admitting to its membership production and maintenance employees of the Company.

United Electrical, Radio, and Machine Workers of America, Local 1139, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership production and maintenance employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The United claims that on October 5, 1937, a majority of the employees of the Company became members of that organization.

On October 6 the United submitted a proposed agreement to the Company. A representative of the I. A. M. commenced about October 7 to solicit employees to join his organization. A number of the employees thought the Company was hostile to the United and was postponing negotiations with that union until the I. A. M. could induce employees to change their affiliation. Accordingly, on October 13, 10 or 11 employees walked out in protest. Later the same day the Company shut down the production department and laid off all employees except the office force. The United commenced picketing the plant, which remained closed for about two weeks. The plant was reopened pursuant to an agreement whereby the Company was to rehire its employees as fast as production would justify it in the order of their seniority according to a list furnished by the Company. The unions agreed to submit the matter to the Board for decision.

We find that a question has arisen concerning the 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 tends to lead and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

In its petition the I. A. M. alleges that "twenty-three production workers" of the Company constitute a unit appropriate for collective bargaining. The United in an intervening petition claims a unit composed of "all employees except clerical and supervisory employees" is appropriate. Strictly construed, the I. A. M. description would exclude maintenance workers, but it is not clear from the record that such was its intention. We shall include maintenance employees within the bargaining unit.

Both unions agree that supervisory employees should be excluded from the unit found to be appropriate, but they differ on the question whether William Jensen is a supervisory employee. Jensen is a skilled and experienced employee whose duties include instructing other employees and inspecting their work, but who works at production and is paid an hourly wage, as are other production workers. Three employees of the Company, testifying for the United, stated that they considered Jensen a foreman. A United organizer, however, who heard testimony relating to Jensen's duties, testified that he thought Jensen should be permitted to vote in the event of an

election to determine representatives for collective bargaining. We find that Jensen should be included within the bargaining unit.

Both unions agree that John Ludwig should be excluded from the unit found to be appropriate for collective bargaining. Ludwig, who was hired after the strike to do experimental work, is a highly skilled and valuable employee whom both unions apparently believe able to bargain effectively for himself. It does not appear that he is a member of either organization, and there is no showing that he desires to be included in the unit here under consideration. We shall refer to him herein as an experimental worker, and he will be excluded from the bargaining unit.

We find that all employees of the Company, excluding clerical and supervisory employees and the experimental worker, 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

The I. A. M. in its petition claimed to represent 23 production workers of the Company. In an intervening petition the United alleged that it represented 18 production workers. Neither organization offered proof of authority to represent a majority of the employees in the unit which we have found to be appropriate. The question concerning representation of employees of the Company within the appropriate unit can best be resolved by holding an election by secret ballot, to determine whether the employees wish to be represented by the I. A. M., by the United, or by neither.

The unions contend for different dates for determining the eligibility of employees to vote at an election. The I. A. M. urges that only those employees on the pay roll of the Company on August 13, 1937, 60 days prior to the strike, be allowed to vote. The reason given is that union contracts with employers engaged in work similar to that of the Company often provide for a probationary period of 30, 60, or 90 days during which the employer has an option to discharge new employees at will. It appears, however, that this provision is commonly included at the request of the employer for his protection, and further, that newly hired employees are immediately eligible for membership in the I. A. M., which bargains for probationary employees as well as for the other employees. The reasons advanced for taking a date 60 days prior to the strike are not convincing.

The United asks that eligibility to vote be determined as of October 6, 1937, when that organization first requested negotiations with the Company. The pay roll of the Company remained unchanged from October 6 to October 13, 1937, the date of the strike, except that two

employees who appear on the pay roll for October 12 were laid off on that day. In election cases involving strikes we have heretofore held that employees on the pay roll on the last working day² or during the pay-roll period³ preceding the strike were eligible to vote. We shall, therefore, direct an election among those employees in the appropriate unit who were on the pay roll of the Company on October 12, 1937, exclusive of those who have since quit or been discharged for cause.

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 North Star Specialty Manufacturing Co., Minneapolis, Minnesota, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company, excluding clerical and supervisory employees and the experimental worker, 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 part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with North Star Specialty Manufacturing Co., Minneapolis, Minnesota, 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 Eighteenth 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 all employees of the Company, excluding clerical and supervisory employees and the experimental worker, who were on the pay roll on October 12, 1937, excepting those who have since quit or been discharged for cause, to determine whether they desire to be represented by International Association of Machinists, Local 382, or United Electrical, Radio and Machine Workers of America, Local 1139, for the purposes of collective bargaining, or by neither.

² *In the Matter of Saxon Mills and Local Union No. 1882, United Textile Workers of America*, 1 N. L. R. B. 153.

³ *In the Matter of Oregon Worsted Company and United Textile Workers of America, Local 2435*, 2 N. L. R. B. 417.