

In the Matter of THE DEVILBISS COMPANY and INTERNATIONAL
UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, #12

Case No. R-624.—Decided March 16, 1938

*Atomizer and Painting Equipment Industry—Investigation of Representatives:
agreement for election—Election Ordered—Certification of Representatives*

Mr. Harry L. Lodish, for the Board.

Davis, Wall & Bloch, by *Mr. Henry R. Bloch* and *Mr. Marshall Mellhorn*, of Toledo, Ohio, for the Company.

Mr. C. I. Kiker, *Mr. Wm. E. Siefke*, and *Mr. Frank Sido*, of Toledo, Ohio, for the Union.

Mr. Oscar J. Smith, *Mr. Irving Lumburg*, *Mr. Milden Murphy*, *Mr. Jack Briggs*, and *Mr. Russell Hough*, of Toledo, Ohio, for the Association.

Mr. Abraham L. Kaminstein, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 28, 1937, International Union, United Automobile Workers of America, #12, herein called the Union, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The DeVilbiss Company, Toledo, Ohio, 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 February 1, 1938, 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 February 17, 1938, the Regional Director issued and duly served a notice of hearing upon the Company, the Union, and the Employees of the DeVilbiss Company Association, herein called the Association, a labor organization named in the petition as claiming members among the Company's employees. Pursuant to the notice, a hearing was held on March 9, 1938, at Toledo, Ohio, before Harlow Hurley, the Trial Examiner duly designated by the Board. The Board, the Company, the Union, and the Association were represented by counsel, and 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, all parties agreed upon various stipulations which were introduced into the record.

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

FINDINGS OF FACT

The Company is an Ohio corporation, incorporated in May 1905, with its plant at Toledo, Ohio, and with warehouse facilities in New York, Pennsylvania, Michigan, Illinois, Kansas, Wisconsin, Missouri, Texas, California, and Utah. It manufactures atomizers, spray painting equipment, and hose. The principal raw materials are crude rubber, brass rods, and glass. Ninety per cent of these raw materials come from without the State of Ohio. Similarly 90 per cent of the finished products are shipped to points outside the State of Ohio. The total amount of sales and purchases for the year 1937 runs into several hundred thousand dollars.

We find that the Company's operations at its plant constitute a continuous flow of trade, traffic, and commerce among the several States.

It was further stipulated that the Union and the Association are each labor organizations as defined by the Act; that the Association claims to represent a majority of all the employees except direct representatives of management, such as salesmen, superintendents, foremen, group leaders, time-study men, watchmen, and confidential salaried employees; that the Association and the Union each claim to represent a majority of all the production employees except those in a supervisory capacity; that the Company has recognized the claim of the Association, but refused to recognize the claim of the Union; that the question of majority representation can only be resolved by an election; and that the pay roll of the Company of October 28, 1937, shall be used for the purpose of determining eligibility to vote. It was also stipulated between the Union and the Association that those eligible to vote in the election should be all employees in the

plant, in all divisions working on an hourly and piece-work basis of pay.¹

On the basis of the above findings and stipulations, the Board will order an election to determine whether the production employees desire to be represented by the Union or the Association.

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

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with The DeVilbiss Company, Toledo, Ohio, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth 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, and in accordance with the stipulations entered into in this case, among the production employees of The DeVilbiss Company at its Toledo, Ohio, plant, who are paid on an hourly or piece-work basis, whose names appear on the pay roll of the Company for October 28, 1937, exclusive of supervisory, office, and non-production employees, and those who have been discharged or who have quit, to determine whether they desire to be represented by International Union, United Automobile Workers of America, #12, or Employees of the DeVilbiss Company Association, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

April 20, 1938

On March 16, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be held among the production employees of

¹ Board Exhibit No. 3 contains a list of the employees and an indication as to their eligibility to vote in the election. Employees who have been discharged or have left the employment of the Company, and whose names do not appear on Board Exhibit No. 3 will not be eligible to vote in the election.

The parties also agreed upon the specific conditions under which the election was to be held, and the manner of voting.

The DeVilbiss Company at its Toledo, Ohio, plant, herein called the Company, who were paid on an hourly or piece-work basis, whose names appeared on the pay roll of the Company for October 28, 1937, exclusive of supervisory, office, and non-production employees, and those who had been discharged or who had quit, to determine whether they desired to be represented by International Union, United Automobile Workers of America, #12, or Employees of The DeVilbiss Company Association for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on March 25, 1938, at Toledo, Ohio, under the direction and supervision of the Regional Director for the Eighth Region (Cleveland, Ohio). On March 28, 1938, the said Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret balloting, the Regional Director reported as follows:

Total number of employees eligible.....	626
Total number of ballots cast.....	580
Total number of votes for International Union, United Automobile Workers of America, #12 (C. I. O.).....	162
Total number of votes for Employees of The DeVilbiss Company Association.....	396
Total number of votes for neither organization.....	14
Total number of blank ballots.....	1
Total number of void ballots.....	5
Total number of challenged votes.....	2

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, herein called the Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Employees of The DeVilbiss Company Association has been designated and selected by a majority of the production employees of The DeVilbiss Company at its Toledo, Ohio, plant, who are paid on an hourly or piece-work basis, excluding clerical and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Employees of The DeVilbiss Company Association 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.