

In the Matter of DIAMOND IRON WORKS and UNITED ELECTRICAL
RADIO MACHINE WORKERS OF AMERICA, LOCAL 1140

Case No. R-596.—Decided March 21, 1938

Iron and Steel Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations, controversy as to appropriate unit—*Unit Appropriate for Collective Bargaining:* roadmen spending almost entire time installing machinery away from factory excluded; unit confined to production employees spending all or nearly all their time at factory—*Election Ordered:* employees on pay roll on date of petition, including those since laid off who have seniority status, entitled to vote—*Certification of Representatives.*

Mr. Thurlow Smoot, for the Board.

Mr. L. C. Babcock, of Minneapolis, Minn., for the Company.

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

Mr. W. A. Heath and *Mr. Heinar Hussman,* of Minneapolis, Minn., for the I. A. M.

Mr. Spurgeon Avakian, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 23, 1937, United Electrical Radio and Machine Workers of America, Local 1140,¹ herein called the United, 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 the Diamond Iron Works, 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 January 10, 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

¹ In the petition and in the order directing an investigation the name of the petitioner was incorrectly stated as "United Electrical Radio Machine Workers of America, Local 1140"

conduct it and to provide for an appropriate hearing upon due notice.

On February 3, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, and upon the International Association of Machinists, Local 382, herein called the I. A. M., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on February 15, 1938, at Minneapolis, Minnesota, before J. J. Fitzpatrick, the Trial Examiner duly designated by the Board. The Board, the Company, the United, and the I. A. M. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Diamond Iron Works, a Delaware corporation, has its principal office and sole factory in Minneapolis, Minnesota. It manufactures industrial heating equipment, rock crushers, screening and washing plants, sawmill machinery, grain elevator equipment, and iron castings, and also does some machine shop work. According to a stipulation entered into between the Board and the Company, and read into the record at the hearing, about 80 per cent of the raw materials used by the Company are purchased outside the State of Minnesota, and about 85 per cent of the finished products are sold outside of Minnesota in various parts of the United States.

II. THE ORGANIZATIONS INVOLVED

United Electrical Radio and Machine Workers of America, Local 1140, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production employees of the Company, excluding office and clerical workers and supervisory officials.

International Association of Machinists, Local 382, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all production employees of the Company, excluding office and clerical workers and supervisory officials.

III. THE QUESTION CONCERNING REPRESENTATION

The organizing efforts of the United among the Company's employees commenced in the latter part of August 1937. Prior to that time, on July 1, 1937, the Company had entered into a contract with the I. A. M. regarding wages, hours, and other conditions of employment. This contract, which was for a year's duration, provided that the employees who were members of the I. A. M. were to be represented by a bargaining committee chosen by such employees. At the time the contract was signed the I. A. M. was the only union in the plant and seemingly represented a majority of the employees. By the month of October 1937, a substantial number of the employees, apparently including some members of the bargaining committee provided for by the contract of July 1, 1937, had joined the United. The Company is willing to bargain with the representative of a majority of its employees, but does not know which union represents a majority.

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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Company, the United, and the I. A. M. agreed at the hearing that the employees of the Company in the assembly, foundry, machine shop, and pattern shop departments, excluding office and clerical workers, supervisory employees, stock clerks, and engineers, constitute a unit appropriate for the purposes of collective bargaining. All the production work of the Company is performed in the four departments mentioned. The evidence shows that there is a large degree of interdependence between these departments, that occasionally employees are transferred from one department to another, and that the problems and working conditions of the employees in the various departments are closely related.

The Company sometimes sends employees from its production departments away from the plant, as "road men," to assemble, install, or repair machinery in various parts of the country. Before new

machinery is sent out, it is assembled in the assembly department and inspected. It is then dismantled and sent to the point of installation, where it is reassembled and installed. In the case of small installation jobs, the roadman sent from the factory does all the work. When necessary, however, he employs local men, and to that extent he acts as a supervisory official with the right to hire and fire.

Three of the production employees of the Company, Freeman, Kurke, and DeLisle, were sent out to install machinery during 1937. Freeman spent all of his time in such work. Kurke spent 90 per cent of his time on installations, and 10 per cent in the factory. DeLisle spent 10 per cent of the time on installations, and 90 per cent in the factory. The Company believes that all roadmen should be included in the unit, on the ground that they are too few to be classed by themselves. The United contends that only those roadmen who spend more than half their time at the plant should be included. The position of the I. A. M. is that the duties and interests of the roadmen, even while on the road, are closely akin to those of the men in the plant, and hence that all roadmen should be included. We hold that Freeman and Kurke, who spend practically all of their time on the road, should not be included in the unit with the production employees.² DeLisle, however, is properly classed with the production employees, since he spends very little time on the road. We hold that he is entitled to participate in the selection of representatives.

We hold that the production employees of the Company, excluding office and clerical workers, supervisory employees, stock clerks, and engineers, 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

Neither the United nor the I. A. M. produced any proof at the hearing to show how many of the Company's employees it represented. The only evidence on this question relates to an informal election conducted by the bargaining committee of the I. A. M. in October 1937. At the end of the first day's balloting, the vote was 55 for the United and 54 for the I. A. M. Since some of the men had not had an opportunity to vote, the committee decided to receive ballots for another week, at the end of which time the count was 64 for the I. A. M. and 63 for the United. It was not shown that the election was within the unit described in Section V above.

² See *Matter of R. C. Mahon Company and Local 1279, Steel Workers Organizing Committee*, 5 N. L. R. B. 257

We hold that an election by secret ballot is necessary to resolve the question concerning representation.

The United requests that eligibility to vote in the election be based on the pay-roll period which includes October 23, 1937, the date of the filing of the petition. The I. A. M. has expressed no preference. The Company prefers the pay-roll period which includes February 15, 1938, the date of the hearing. On October 23, 1937, the Company employed about 130 men within the appropriate unit. On February 15, 1938, there were 26 fewer employees at work. Under a long-standing policy of the Company, anyone who works for 45 consecutive days acquires seniority standing and must be given preferential treatment when it becomes necessary for the Company to decrease or increase its crew. There is no showing that laid-off employees without seniority are given any preference when more men are needed. Of the 26 men whom the Company laid off between October 23, 1937, and February 15, 1938, 24 had acquired the seniority status which will give them preference when the Company needs more men. It is evident that these 24 men, during the period in which they are laid off, retain an interest in working conditions which may be set up at the factory. It is our opinion that all persons who were employees of the Company within the appropriate unit during the pay-roll period which includes the date of the petition, October 23, 1937, including those who, though not at work at the present time, have seniority standing, are entitled to participate in the election. We hold that all such persons shall be eligible to vote in the election ordered herein.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning representation of employees of Diamond Iron Works, Minneapolis, Minnesota, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company, excluding office and clerical workers, supervisory employees, stock clerks, and engineers, 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 Act, 49 Stat. 449, and pursuant to Article III, Sec-

tion 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 purposes of collective bargaining with Diamond Iron Works, Minneapolis, Minnesota, an election by secret ballot 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, among the production employees of the Company during the pay-roll period which includes October 23, 1937, excluding office and clerical workers, supervisory employees, stock clerks, and engineers, and excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by United Radio Electrical and Machine Workers, Local 1140, affiliated with the Committee for Industrial Organization, or International Association of Machinists, Local 382, affiliated with the American Federation of Labor, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

April 12, 1938

On March 21, 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 conducted within fifteen (15) days from the date of the Direction among the production employees of the Company during the pay-roll period which includes October 23, 1937, excluding office and clerical workers, supervisory employees, stock clerks, and engineers, and excluding those who since had voluntarily quit or had been discharged for cause, to determine whether they desired to be represented by United Electrical Radio Machine Workers of America, Local 1140, affiliated with the Committee for Industrial Organization, or International Association of Machinists, Local 382, affiliated with the American Federation of Labor, or by neither.

Pursuant to this Decision and Direction of Election, an election was conducted under the direction and supervision of Robert J. Wiener, Acting Regional Director for the Eighteenth Region (Minneapolis, Minnesota), on April 5, 1938. Thereafter, 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 his Intermediate Report on the ballot. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible.....	127
Total ballots cast.....	111
Total number of votes cast for United Electrical Radio Machine Workers of America, Local 1140 (Affiliated with C. I. O.)..	35
Total number of votes cast for the International Association of Machinists, Local 382 (Affiliated with A. F. L.).....	76
Ballots cast for neither of the above organizations.....	0
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged votes.....	0

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Association of Machinists, Local 382, has been designated and selected by a majority of all production employees of Diamond Iron Works, Inc., Minneapolis, Minnesota, excluding office and clerical workers, supervisory employees, stock clerks, and engineers, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, International Association of Machinists, Local 382, is the 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.