

In the Matter of HOLLAND REIGER DIVISION OF APEX ELECTRIC CO.  
and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA

*Case No. R-581.—Decided March 24, 1938*

*Electrical Appliances Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative—*Unit Appropriate for Collective Bargaining:* production and maintenance employees including watchmen and shipping clerks, but excluding clerical, supervisory, and time-study employees: eligibility for membership in both of rival organizations—*Election Ordered*

*Mr. Peter Di Leone*, for the Board.

*Mr. Charles E. Frohman*, of Sandusky, Ohio, for the Company.

*Mr. James Pascoe*, of Dayton, Ohio, for the United.

*Mr. J. J. Murphy* and *Mr. William R. McCourt*, both of Sandusky, Ohio, for the I. A. M.

*Mr. J. H. Krug*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 7, 1937, Local 710, United Electrical, Radio and Machine Workers of America,<sup>1</sup> herein called the United, 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 Holland-Rieger Corporation (Division of The Apex Electrical Manufacturing Company),<sup>2</sup> Sandusky, 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 January 14, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act

<sup>1</sup> Referred to in the Order directing investigation and hearing as United Electrical, Radio and Machine Workers of America

<sup>2</sup> The petition referred to "Holland Reiger Division of Apex Electric Co" It appears from the record that the Sandusky plant is owned and operated by Holland-Rieger Corporation, a subsidiary of The Apex Electrical Manufacturing Company The plant is commonly known as the Holland-Rieger Division of that corporation

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 January 19, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, and upon Lodge 1329, International Association of Machinists, herein called the I. A. M., a labor organization claiming to represent employees directly affected by the investigation. On January 24, 1938, the I. A. M. filed with the Regional Director a motion to intervene, and the Regional Director granted the motion. Pursuant to the notice, a hearing was held on January 28, 1938, at Sandusky, Ohio, before Waldo C. Holden, 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 with one exception no prejudicial errors were committed. With this exception, which will be considered below, the rulings are hereby affirmed.

Upon request made by the United, a hearing was held before the Board in Washington, D. C., on February 28, 1938, for the purpose of oral argument. Notice of the hearing was duly served upon all the parties. The I. A. M. was represented by counsel and participated in the hearing.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY<sup>3</sup>

Holland-Rieger Corporation is engaged in the manufacture of electrical appliances, chiefly washing and ironing machines. The Company's manufacturing plant and principal office are located at Sandusky, Ohio. Fifteen per cent of all raw materials used by the Company are derived from sources outside Ohio, and 88 per cent of the finished product is shipped outside the State. During 1937 the Company purchased materials to the value of \$872,089 and total sales amounted to \$1,164,527. The finished product represented approximately two per cent of all washing and ironing machines produced in the United States during 1937.

<sup>3</sup> Substantially all of the facts in this section are derived from a stipulation entered into by counsel for the Company and counsel for the Board.

## II. THE ORGANIZATIONS INVOLVED

Local No. 710, United Electrical, Radio and Machine Workers of America is a labor organization, affiliated with the Committee for Industrial Organization. Apparently it admits to membership all employees at the Sandusky plant, excluding clerical, supervisory, and time-study employees.

Lodge No. 1329, International Association of Machinists is a labor organization, affiliated with the American Federation of Labor. Evidently its eligibility rules at the Sandusky plant are identical with those of the United. Membership in the I. A. M. is not confined to persons employed at this plant.

## III. THE QUESTION CONCERNING REPRESENTATION

In June 1937 the Company entered into a collective bargaining agreement with the United, which recognized the United as bargaining agent for its own members. The contract was to expire on January 1, 1938. Efforts were made by the United to renew the agreement, with a new clause recognizing the United as exclusive bargaining agency. The Company objected to the proposed change on the ground that some of its employees were wearing A. F. of L. buttons. In its petition and at the hearing the United claimed to represent a majority within an appropriate unit. The I. A. M. disputed this claim.

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

Counsel for both labor organizations agreed that the appropriate unit for purposes of collective bargaining should comprise all production and maintenance employees at the Sandusky plant, including watchmen and shipping clerks, but excluding clerical, supervisory, and time-study employees. Counsel for the Company objected only to inclusion of the watchmen. Some of the watchmen have signed authorization cards in which they designated the United as their

representative for purposes of collective bargaining. Both labor organizations apparently admit watchmen to membership and, as we have seen, both desire to include watchmen in the bargaining unit. Under the circumstances, we conclude that the unit should include the watchmen.

In accordance with our usual practice, we shall exclude from the bargaining unit the clerical and supervisory workers. There was no evidence concerning the functions or interests of the time-study employees. Since the Company and both labor organizations were in accord upon the exclusion of these employees, we conclude that they should not be embraced in the appropriate bargaining unit.

We find that the production and maintenance employees of the Company at the Sandusky, Ohio, plant, including watchmen and shipping clerks, but excluding clerical, supervisory, and time-study employees, 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

At the hearing the United introduced 197 authorization cards, to which counsel for the I. A. M. offered no objection. A committee composed of four members of the United, including its president and recording secretary, circulated the cards, between December 20, 1937, and the date of the hearing, among the employees of the Sandusky plant. The recording secretary testified that each member of the committee witnessed the signed cards which he obtained. The United urges that the cards afford proof that it represents a majority in the appropriate bargaining unit, and requests certification by the Board without an election.

The I. A. M., on the other hand, contends that the question concerning representation should be resolved by an election. Organizing activities at the plant by the I. A. M. began in November 1937 and on December 8, 1937, it received a charter. Testimony presented on behalf of the I. A. M. was, almost wholly, an effort to show that a reasonable doubt existed regarding the United's claim of representing a majority in the appropriate unit. Three witnesses, formerly members of the United, had recently changed their affiliation to the I. A. M. Counsel for the I. A. M. sought to show that the sentiment of the Sandusky employees had shifted very recently from the United to the I. A. M. He introduced five authorization cards signed by employees whose names appear on United cards. These five are all dated between January 24, 1938, and January 28, inclusive. Only one other I. A. M. card was admitted in evidence. All six were iden-

tified by the union members who witnessed the signatures. Counsel for the I. A. M. offered in evidence a large number of other authorization cards, all of which were excluded by the Trial Examiner. Some of these, it was claimed, were duplicates of United cards.

A check of the authorization cards introduced at the hearing with a list,<sup>4</sup> prepared by the Company, of "all factory employees" on the pay roll during the period ending December 1, 1937, reveals the following:

Total names on pay roll-----	367
United cards which check with pay roll (including 1 doubtful case)-----	191
United cards not on pay roll-----	6
I A. M. cards, all on pay roll-----	6
Duplicates-----	5
Total unduplicated United cards (including 1 doubtful card)-	186

The count thus indicates that of a total of 367 employees the United has a majority of two. We are not convinced, however, that it has made a showing warranting certification without an election. The pay roll, and also the United authorization cards, may contain names of employees who are excluded from the appropriate bargaining unit. Moreover, the United was enabled to make its showing of a majority only because of the action of the Trial Examiner in excluding the I. A. M. cards. Its claims must rest, therefore, upon the validity of this ruling. At the hearing, counsel for the I. A. M. offered 69 authorization cards, one group consisting of 18 cards claimed to be duplicates of those introduced by the United, and the other containing 51 additional cards. Upon objection by counsel for the United, the Trial Examiner stated that unless the signatures were authenticated, the cards would not be received in evidence. Five cards were then identified by an officer of the I. A. M. who testified that he had witnessed the signatures. These five, signed by employees who had also executed United cards, were admitted in evidence and have been considered above. The five were evidently taken from the group of 18 claimed duplicates. It appears, therefore, that the Trial Examiner excluded 13 cards which the I. A. M. contended were signed by employees who also executed cards of the United. The only testimony which might relate to the authenticity of the signatures on the 13 cards was the statement of an officer of the I. A. M. that he had witnessed the signatures of cards other than the five which were received in evidence. Under the circumstances, therefore, the 13 cards would not establish that the persons whose names appear thereon desire to be represented by the I. A. M. They might, however, cast some doubt upon the claims of the United, and we think the Trial Examiner erred in excluding

<sup>4</sup> Board Exhibit No. 3

them. It is possible that the 13 cards were signed by employees whose names appear on the United cards. In view of this circumstance, since the pay roll with which the United cards have been compared, and the United cards themselves, may contain names of employees who are not within the bargaining unit, and also since the majority shown by comparison of the United cards with the pay roll is exceedingly slender, we cannot say with assurance that the United represents a majority of the employees in the appropriate unit.

We find that the question which has arisen concerning representation can best be resolved by means of an election by secret ballot.

Both unions are agreeable to the use of the pay roll for the period ending December 1, 1937, for determining eligibility to vote, and the Company has made no objection. We conclude, under the circumstances, that those eligible to vote in the election shall be the persons within the appropriate unit employed by the Company at the Sandusky, Ohio, plant during the pay-roll period ending December 1, 1937, excluding 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 Holland-Rieger Corporation (Division of The Apex Electrical Manufacturing Company), Sandusky, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of the Company, including watchmen and shipping clerks, but excluding clerical, supervisory, and time-study employees, 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 Holland-Rieger Corporation (Division of The Apex Electrical Manufacturing Company), Sandusky, Ohio, 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 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, among all persons employed at the Sandusky, Ohio, plant of the Company during the pay-roll period ending December 1, 1937, as production and maintenance employees, including watchmen and shipping clerks, but excluding clerical, supervisory, and time-study employees, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by Local No. 710, United Electrical, Radio and Machine Workers of America, affiliated with the Committee for Industrial Organization, or by Lodge No. 1329, International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

#### AMENDMENT TO DIRECTION OF ELECTION

*April 8, 1938*

On March 24, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction, under the supervision of the Regional Director for the Eighth Region (Cleveland, Ohio). At the request of the Regional Director we shall postpone the election for the present.

The Board hereby amends its Direction of Election by striking out the words "within fifteen (15) days from the date of this Direction" and substituting therefor the words "at such time as the Board may in the future direct".