

In the Matter of VAN ARNAN MANUFACTURING Co. and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA

Case No. R-623.—Decided April 7, 1938

Bathroom Equipment Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning union as sole bargaining agency—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding executives, clerical help, foremen, and all supervisory officials having authority to hire and discharge; stipulation as to—*Representatives:* proof of choice: comparison of pay roll with membership cards—*Certification of Representatives:* upon proof of majority representation.

Mr. Walter B. Chelf, for the Board.

Mr. Howard L. Van Arnan, of Fort Wayne, Ind., for the Company.

Mr. E. G. Bunting, of Fort Wayne, Ind., for the Union.

Mr. Raymond J. Compton, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On December 9, 1937, United Electrical, Radio and Machine Workers of America, Local No. 908, herein called the Union, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Van Arnan Manufacturing Company, Fort Wayne, Indiana, 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 19, 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 9, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on February

28, 1938, at Fort Wayne, Indiana, before William P. Webb, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and 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 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, an Indiana corporation, has its office and principal place of business in Fort Wayne, Indiana. It is engaged in the business of the manufacture, sale, and distribution of toilet seats, hampers, and special bathroom equipment. The one and only plant of the Company is located at Fort Wayne, Indiana. According to a stipulation entered into by the Company and the Board, 65 per cent of the raw materials used in the business of the Company come from sources outside of the State of Indiana, and 60 per cent of the finished products are likewise shipped outside of the State of Indiana. The Company's advertising is done on a national scale, and its sales are nation-wide in scope. The Company is the sixth largest of its kind in the United States, and in 1937 its annual purchase of raw material was about \$110,000 in value, and the gross business was estimated at about \$235,000.

At the present time the Company employs about 72 hourly paid production and maintenance employees at the plant, both skilled and unskilled.

II. THE ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, Local No. 908, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees of the Company, and excluding executives, clerical help, foremen, and all supervisory officials having authority to hire and discharge.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to March 1, 1937, there were no unions in the Company's plant. About March 1, 1937, the organization of the Union was commenced and by May 1, 1937 all but a few of the employees in

the plant had become members. On May 11, 1937, the Company and the Union entered into an agreement which did not state that the Union represented a majority, or that it was the sole representative of its employees for purposes of collective bargaining. The agreement had no definite date of termination, and was more in the nature of a statement of the Company's policy with respect to the treatment of the employees than a contract in regard to collective bargaining. The Union operated under this agreement until October 1937, at which time the Union presented to the Company a new agreement in the form of a contract, which specifically stated that the Union represented a majority of the Company's employees in the plant and that it was the sole representative of such employees for the purpose of collective bargaining. The Company refused to recognize the Union as the sole collective bargaining agent, and as a consequence, the Union filed its petition alleging that the Company had refused to grant bargaining rights to the Union and requesting a certification. The Company has not at any time since the organization of the Union questioned or denied that the Union represents a majority of the employees in the plant, but has denied the Union recognition as the exclusive bargaining representative.

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

It was stipulated and agreed by all parties in interest and we find that all the production and maintenance employees of the Company, excluding executives, clerical help, foremen, and all supervisory officials having authority to hire and discharge, 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

During the hearing, a check of the membership cards of the Union and the Company's pay roll of February 19, 1938, by the Board's

attorney without objection of counsel for the Company and in the presence of all parties interested, showed that of the 68 employees on the pay roll within the unit which we have found appropriate, 65 were members of the Union.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit 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 Van Arnan Manufacturing Company, Fort Wayne, Indiana, 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, excluding executives, clerical help, foremen, and all supervisory officials having authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Electrical, Radio and Machine Workers of America, Local No. 908, 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 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 CERTIFIED that United Electrical, Radio and Machine Workers of America, Local No. 908, has been designated and selected by a majority of the production and maintenance employees of Van Arnan Manufacturing Company, Fort Wayne, Indiana, excluding executives, clerical help, foremen, and all supervisory officials having authority to hire and discharge, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, United Electrical, Radio and Machine Workers of America, Local No. 908, 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.