

In the Matter of Mergenthaler Linotype Co. and Federation of
Architects, Engineers, Chemists and Technicians

Case No. R-351.—Decided April 18, 1938

Printing Equipment and Accessories Manufacturing Industry—Investigation of Representatives: request for withdrawal of petition for, denied; controversy concerning representation of employees: controversy concerning appropriate unit; refusal by employer to recognize any union until certification by Board; rival organizations—*Unit Appropriate for Collective Bargaining:* technical employees in engineering and research and development departments; eligibility for membership in both rival organizations; skilled; contention of Company that confidential nature of work in one department requires separate unit, held without merit—*Election Ordered*

Mr. David Moscovitz and Mr. Albert Ornstein, for the Board.

Gleason, McLanahan, Merritt & Ingraham, by Mr. Henry Clifton, Jr., of New York City, for the Company.

Mr. Hyman N. Glickstein, of New York City, for the Federation.

Breed, Abbott & Morgan, by Mr. Thomas E. Kerwin and Mr. Frederick B. Bryant, of New York City, for the Association.

Mr. Victor A. Pascal, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 13, 1937, Federation of Architects, Engineers, Chemists and Technicians, herein called the Federation, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Mergenthaler Linotype Company, New York City, 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 August 21, 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.

A hearing was held on September 13 and 14, 1937, at New York City before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, the Federation, and the Engineering Department Employees Association of the Mergenthaler Linotype Company, herein called the Association, 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.

On February 5, 1938, the Federation filed an application with the Board requesting leave to withdraw the petition it filed on August 13, 1937, stating that, after the hearing, the Company had laid off a large number of its members. The Association filed an affidavit with the Board on February 10, 1938, in opposition to the withdrawal of the petition, stating that the Association represented a majority of the employees in the appropriate unit and that, as the Company refused to bargain collectively until certification of a bargaining representative by the Board, the withdrawal of the petition would merely involve unnecessary delay attendant upon the commencement of a new proceeding.

On February 23, 1938, the Board, acting pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that a further hearing be held. On March 1, 1938, the Regional Director issued a notice of hearing, copies of which were served upon the attorneys for the Company, the Federation, and the Association. Pursuant to the notice, a hearing was held on March 2, 1938, at New York City before Paul Davier, the Trial Examiner duly designated by the Board. The Board, the Company, the Federation, and the Association 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.

Upon consideration of the Federation's application for withdrawal of its petition, we find that the application should be, and it hereby is, denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a New York corporation maintaining a plant in New York City. It is engaged in the manufacture and sale of linotype machines and other printing equipment and accessories.

Approximately 40 per cent of the raw materials purchased by the Company are obtained from points outside the State of New York and approximately 88 per cent of its finished products are shipped to points outside the State of New York.

II. THE ORGANIZATIONS INVOLVED

Federation of Architects, Engineers, Chemists and Technicians is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership employees in the engineering and research and development departments of the Company.

Engineering Department Employees Association of the Mergenthaler Linotype Company is an unaffiliated labor organization. It likewise admits to its membership employees in the Company's engineering and research and development departments.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to the filing of its petition, the Federation requested the Company to bargain with it as the representative of the employees in the engineering and research and development departments. The Company stated that it would not recognize any bargaining representative until certification of such representative by the Board.

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

In its petition, the Federation alleged that all mechanical draftsmen employed by the Company constitute an appropriate unit. The evidence shows that the Federation intended by its description of the unit to include all technical employees in the engineering and research and development departments. The Association raised no objection to the Federation's description of the unit. The Company, however, objected to the inclusion of employees of the research and development department in the same unit with employees of the engineering department. It claims that the work performed in the research and development department is of a confidential nature, that employees from other departments are forbidden to enter this department without a special permit, that this department is physically separated from the rest of the plant, that the employees in this department are individualists who should not be controlled by the employees in the engineering department, and that the Com-

pany maintains separate records for the research and development department.

The work of the engineering department includes the designing and development of the machinery and tools necessary for the manufacture of the products sold by the Company. The employees in this department are classified, according to the nature of their work, as operation lay-out men, tool designers, junior tool designers, machine designers, engineers and technicians, time-study men, draftsmen, illustrators, and blue-print machine operators. The employees in the research and development department originate improvements and develop models and mechanisms for the linotype machine. Their work is also of a technical nature.

Although the record indicates some physical separation between the two departments, it is not shown that the separation is such as to preclude effective collective bargaining among the employees of the two departments. Furthermore, the contention based upon the confidential nature of the work performed in the research and development department appears to be without merit. The inclusion of employees of the research and development department in a bargaining unit with employees of the engineering department would not seem to involve a disclosure of any matters of a confidential nature. It was pointed out above that the two labor organizations here involved are in agreement as to the inclusion of employees of both departments in the bargaining unit. Both labor organizations admit employees in both departments to their membership and the evidence indicates that employees of both departments are, in fact, members of the Federation. Under all the circumstances, we conclude that the unit should be composed of employees of both departments.

Although the Federation and Association are in agreement as to the description of the bargaining unit, they disagree as to whether five employees, namely, John Horn, Otto Schoenburg, Edward Baumann, Louis Gaa, and William Koch, properly come within such description. The Federation claims that the five employees do clerical rather than technical work and should be excluded from the unit. The Association, on the other hand, claims that all five employees do work of a technical nature. Affidavits¹ submitted by the five employees show that John Horn prepares lists of all parts of the various models to be furnished to the industrial engineer for schedule purposes; that Otto Schoenburg classifies orders for parts, tools, and other products for inventory and insurance purposes, has charge of the inactive tool storage, and furnishes estimates on additional work on tools purchased; that Edward Baumann and William Koch

¹ These affidavits were submitted pursuant to stipulation of the parties.

do lay-out work and prepare changes to be worked out by the draftsmen on their drawing boards; and that Louis Gaa prepares lists of parts for attachments and outside supplies. The affidavit of the chief clerk of the engineering department substantiates the contention that the five employees do work of a technical nature.¹

We find that the nature of the work performed by John Horn, Otto Schoenburg, Edward Baumann, Louis Gaa, and William Koch is such that they should properly be included among the technical employees of the engineering department.

We find that the technical employees of the Company in its engineering and research and development departments 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 collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The evidence indicates that, at the time of the hearing, there were approximately 113 employees in the unit which we have found to be appropriate for the purposes of collective bargaining. A representative of the Federation testified that it represented about 60 or 70 of the employees in this unit. The treasurer of the Association testified that it had about 64 members in the unit. No membership cards, designations, or other like evidence was introduced in support of the claims of the Federation or the Association. We find, therefore, that the question concerning representation which has arisen can best be resolved by an election by secret ballot.

The parties stipulated at the hearing that, if the Board found that the appropriate unit should include employees in both the engineering and research and development departments, eligibility to vote should be determined on the basis of employee lists entitled Exhibits A and B, attached to Board Exhibit No. 2, subject to the right of the Association to propose additions to or deletions from the names on the lists. Question arose only as to the addition to the list of the names of John Horn, Otto Schoenburg, Edward Baumann, Louis Gaa, and William Koch, whom we have found should be included within the bargaining unit.

We find that all employees of the Company whose names are listed on Exhibits A and B, attached to Board Exhibit No. 2, together with John Horn, Otto Schoenburg, Edward Baumann, Louis Gaa, and William Koch, but excluding those employees who since September 13, 1937² have quit or been discharged for cause, shall be eligible to vote.

¹ These affidavits were submitted pursuant to stipulation of the parties

² The date of the hearing.

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 Mergenthaler Linotype Company, New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
2. The technical employees of the Company in its engineering and research and development departments 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 the National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Mergenthaler Linotype Company, New York City, 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 Second 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 the employees of the Company whose names are listed on Exhibits A and B, attached to Board Exhibit No. 2, together with John Horn, Otto Schoenburg, Edward Baumann, Louis Gaa, and William Koch, but excluding those employees who since September 13, 1937 have quit or been discharged for cause, to determine whether they desire to be represented by Federation of Architects, Engineers, Chemists and Technicians or by Engineering Department Employees Association of the Mergenthaler Linotype Company, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

April 29, 1938

On April 18, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the

above-entitled case. Thereafter, the Federation of Architects, Engineers, Chemists and Technicians, the petitioner in the proceeding, requested the Board to withdraw its name from the ballot in the election which the Board ordered in said Decision and Direction of Election.

After due consideration of this request, the Board hereby

DIRECTS that the Direction of Election in the above-entitled matter, dated April 18, 1938, be amended by striking out the words, "to determine whether they desire to be represented by Federation of Architects, Engineers, Chemists and Technicians or by Engineering Department Employees Association of the Mergenthaler Linotype Company, for the purposes of collective bargaining, or by neither," which appear in the last sentence of the last paragraph of said Direction of Election, and by inserting in lieu thereof the words, "to determine whether or not they desire to be represented by Engineering Department Employees Association of the Mergenthaler Linotype Company for the purposes of collective bargaining."