

In the Matter of REX MANUFACTURING Co., INC. and A. F. OF L.
FEDERAL LOCAL UNION No. 20893

Case No. R-663.—Decided May 10, 1938

Furniture Manufacturing Industry—Refrigerator Cabinet Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; strike—*Unit Appropriate for Collective Bargaining:* all production and maintenance employees, excluding clerical employees, foremen, subforemen, and group leaders; subforemen and group leaders excluded from unit to eliminate possibility of charges of employer interference; history of collective bargaining relations with employer—*Election Ordered*

Mr. George Rose, for the Board.

Mr. Emmet P. Delaney, of Clinton, Iowa, for the Company.

Mr. John E. Dwyer and *Mr. Joseph Landow*, of Washington, D. C., for the A. F. of L.

Mr. Paul S. Brady, of Muncie, Ind., for the U. A. W.

Mr. Richard A. Perkins, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 21, 1937, American Federation of Labor Federal Local Union No. 20893, herein called the A. F. of L., 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 Rex Manufacturing Co., Inc., Connersville, 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 October 30, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) 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. The Board further ordered, pursuant to Article

III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, that the proceeding be consolidated for purposes of hearing with a case based on charges against the Company filed with the Regional Director by United Automobile Workers of America, Local No. 152, herein called the U. A. W., alleging that the Company had engaged in and was engaging in certain unfair labor practices within the meaning of the Act.

On November 3, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the A. F. of L., and upon the U. A. W., a labor organization claiming to represent employees directly affected by the investigation.

On November 8, 1937, the U. A. W. filed with the Regional Director a motion to intervene in the representation proceeding; and on November 9, 1937, the Regional Director issued an order granting the motion. Pursuant to the notice, a hearing of the consolidated cases was held from November 22 to December 7, 1937, at Connersville, Indiana, before Henry J. Kent, the Trial Examiner duly designated by the Board. The Board, the Company, and the U. A. W. were represented by counsel, and the A. F. of L. by union officials. 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.

Although the two cases were consolidated for purposes of hearing, the present Decision and Direction of Election concerns only the representation proceeding.

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 those rulings of the Trial Examiner which affected the issues arising in the representation proceeding 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

Rex Manufacturing Co., Inc., an Indiana corporation, manufactures refrigerator cabinets at its plant at Connersville, Indiana. At least 60 per cent in value of the raw materials used by the Company, including steel, paint, shipping cases, hardware, and lumber, are shipped to the Company from States other than Indiana.

The refrigerator cabinets manufactured by the Company are not finished products ready for distribution to consumers. They are sold to manufacturers who equip them with refrigeration units and dis-

tribute the assembled refrigerators at wholesale and retail. The Company carries on all its production upon order from several manufacturers. During 1936, the Company manufactured 180,000 refrigerator cabinets. During the same period the Company's total sales amounted to approximately \$5,250,000. Fifty per cent of its total production in 1936 was shipped to Illinois and 5 per cent to Ohio; 20 per cent was shipped to points in Indiana; and the remaining 25 per cent was shipped to distributors for the Crosley Radio Corporation located in many States.

The Company's business is highly seasonal. During peak production the Company employs about 1,300 persons. At other times the plant is practically shut down and only a maintenance crew is employed.

II. THE ORGANIZATIONS INVOLVED

American Federation of Labor Federal Local Union No. 20893 is a labor organization chartered by the American Federation of Labor, admitting to membership, employees of the Company.

United Automobile Workers of America, Local No. 152, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership, employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The U. A. W. began organizing the Company's employees in 1936 and became especially active in February and March 1937. On March 15, 1937, a new organization known as the Cabinet and Refrigerator Workers Protective Association, herein called the Association, was formed under circumstances which led the U. A. W. members to believe that it had been inspired by the Company. On March 16 the Company's plant shut down. The Company asserted that the U. A. W. called a strike; and the U. A. W. claimed that the Company locked out its employees. In any event, for purposes of the present proceeding it is immaterial which version is correct. The plant reopened March 18 under an agreement whereby the Company recognized the U. A. W. as bargaining agent for its members. On April 27, 1937, the U. A. W. called a strike in order to obtain an adjustment of grievances which it claimed the Company had not settled satisfactorily. On April 30 the plant reopened under an agreement signed by the U. A. W., the Association, and the Company. Shortly thereafter, the Association went out of existence.

In June 1937, the A. F. of L. began an organizing campaign among the Company's employees. On July 18, 1937, the A. F. of L. proposed to the Company the opening of negotiations. The Company refused to negotiate with the A. F. of L. until such time as that or-

ganization was certified by the Board as exclusive representative of the Company's employees.

On August 14, 1937, the Regional Director upon request of the A. F. of L. compared certain membership cards submitted by the A. F. of L. with a pay roll furnished by the Company, and reported that he found membership cards for 591 of the 952 persons listed on the pay roll.

It is clear that the check made by the Regional Director was purely informal and was undertaken merely as a convenience to the parties. It did not purport to be, nor was it, a certification of the A. F. of L. as the exclusive representative of the Company's employees.

In September 1937 the A. F. of L. entered into a contract with the Company. The contract is not in evidence and its terms do not appear in the record.

The A. F. of L. in its petition claimed to represent a majority of the Company's employees. The U. A. W. in its motion to intervene claims that it represents a majority of the Company's employees.

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 and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The A. F. of L., the U. A. W., and the Company agreed at the hearing that a unit appropriate for the purposes of collective bargaining should include production employees of the Company. Witnesses for the two unions interpreted the term "production", to include maintenance workers. The Company's personnel director in his testimony referred simply to "production" workers, but it does not appear that he meant thereby to exclude maintenance workers. Under these circumstances we shall include production and maintenance workers, with the exceptions specified below, in the appropriate bargaining unit.

The Company and the U. A. W. agreed that clerical employees should be excluded from whatever unit was found to be appropriate by the Board. The A. F. of L. did not state its position on this question explicitly, but it made no claim to represent clerical employees.

We shall, therefore, in accordance with our usual practice, exclude clerical employees from the unit.

The Company and the A. F. of L. contended that general foremen should be the only supervisory employees excluded from the unit. The U. A. W. claims that subforemen and group leaders should also be excluded as supervisory employees. Like the production employees, most of the subforemen and group leaders are paid an hourly wage. They perform manual work part of the time. Subforemen and group leaders are differentiated from other employees in several respects. They do not have the power to hire and fire, but they are authorized to make recommendations to the management in regard to hiring and firing. They were not covered by the Company's contracts with either the U. A. W. or the A. F. of L. When they work overtime they are paid at their regular rate, rather than at an increased rate. They are granted vacations with pay, although other employees are not. They have not been included in seniority lists maintained by the Company. When the Company's production schedule is increased to the point where the addition of a night shift is justified, some of the subforemen and group leaders become foremen on the night shift.

The subforemen and group leaders belong to a class of minor supervisory employees whose inclusion in or exclusion from a unit made up of production workers must depend largely upon the particular facts in each case. Where, as here, there is a history of rivalry among labor organizations claiming to represent employees, it is important that the employer be free from the imputation of coercing his employees in their choice of representatives. Since subforemen and group leaders are in some measure identified with management, it is not improbable that their participation in a controversy between rival unions will lead to charges of employer interference. We will, therefore, exclude subforemen and group leaders, as well as general foremen, from the unit.

We find that all production and maintenance employees of the Company, excluding clerical employees, foremen, subforemen, and group leaders, 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

The A. F. of L. introduced in evidence a list containing the names of 754 employees, who were claimed to be members of the A. F. of L. This list was prepared by the secretary of the A. F. of L. who testified that the 754 names appearing on the list were taken from the membership records of the A. F. of L. No membership cards or other evidence were introduced to support this showing.

The U. A. W. introduced in evidence a list containing the names of 607 employees. This list was prepared and testified to in the same manner as the list produced by the A. F. of L. No membership cards or other evidence were introduced to support this showing of membership.

Many names appear on the lists of both unions. Neither union produced its original membership records at the hearing for examination by opposing counsel. We feel that the evidence is not sufficient to permit a certification of either union without holding an election to determine representatives for collective bargaining. We find, therefore, that the question which has arisen concerning representation of employees of the company can best be resolved by holding an election by secret ballot.

The U. A. W. contended at the hearing that the Company's pay roll of June 4, 1937 should be used to determine the eligibility of the employees to vote in the event that the Board directed an election. The A. F. of L. contended that the pay roll of a later date be used for that purpose, since most of its membership was secured after June 4, 1937. It suggested that the pay roll of August 7, 1937, be used. Both of these dates are too remote to furnish a fair standard for determining eligibility to vote. The evidence indicates that the peak of the Company's operations occurs at about the first of each year and that a general lay-off is customary each spring. The Regional Director has advised the Board that the pay roll for the week ending January 8, 1938, containing 1,117 names, is acceptable to the U. A. W. and to the Company for the purpose of determining eligibility to vote. Since the hearing the A. F. of L. has taken the position that the check made by the Regional Director on August 14, 1937 operated as a certification, and that no election is necessary. As stated in Section III above, this contention is without merit. We feel that the predication of eligibility to vote upon a pay roll of a more recent date than either of the dates suggested at the hearing by the two unions will more accurately reflect the desires of all the Company's employees. We will, therefore, direct that an election be held among those persons in the appropriate unit who were on the pay roll of the Company during the week ending January 8, 1938, 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 Rex Manufacturing Co., Inc., Connersville, Indiana, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All production and maintenance employees of the Company, excluding clerical employees, foremen, subforemen, and group leaders, 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 part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Rex Manufacturing Co., Inc., Connersville, Indiana, 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 Eleventh 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 production and maintenance employees, excluding clerical employees, foremen, subforemen, and group leaders, who were employed by the Company during the week ending January 8, 1938, excepting those who have since quit or been discharged for cause, to determine whether they desire to be represented by American Federation of Labor Federal Local Union No. 20893 or United Automobile Workers of America, Local No. 152, for the purposes of collective bargaining, or by neither.