

In the Matter of AMERICAN RADIATOR COMPANY (BOND PLANT AND TERMINAL PLANT) and AMALGAMATED ASSOCIATION OF IRON, STEEL & TIN WORKERS, LODGES 1199 AND 1629

Cases Nos. R-655 and R-656.—Decided May 25, 1938

Boiler and Radiation Castings and Fittings Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; employer's refusal to grant recognition of union; rival organizations—*Unit Appropriate for Collective Bargaining:* production and maintenance employees at each plant, including those employees on a stagger system of employment, shipping and yard employees, and truckmen, and excluding all supervisory employees, clerical employees, timekeepers, and production clerks; dissimilarity of interest; single plant basis—*Election Ordered*

Mr. Edward D. Flaherty, for the Board.

Mr. John W. Van Allen, of Buffalo, N. Y., for the Company.

Mr. Ernest D. Baumann, of Buffalo, N. Y., for Lodge 1199 and Lodge 1629.

Mr. Fred Galloway, of Buffalo, N. Y., for the Arco Union.

Mr. Albert G. Baum, of Kenmore, N. Y., for the Cloverleaf Cooperative.

Mr. Francis Hoague, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Statement of the Case

On October 25, 1937, Amalgamated Association of Iron, Steel and Tin Workers, Lodge 1199, herein called Lodge 1199, and Amalgamated Association of Iron, Steel and Tin Workers, Lodge 1629, herein called Lodge 1629, each filed with the Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of American Radiator Company, Buffalo, New York, herein called the Company, at its Bond and Terminal Plants, respectively, 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 February 16, 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. The Board further ordered that pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations—Series 1, as amended, for the purposes of hearing, the two cases be consolidated.

On February 19, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, Lodge 1199, Lodge 1629, and upon American Radiator Company Employees Union, herein called the Arco Union, and Cloverleaf Cooperative Association, herein called the Cloverleaf Cooperative, labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 14, 1938, at Buffalo, New York, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the Company, Lodge 1199, Lodge 1629, the Cloverleaf Cooperative, and the Arco Union were represented 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 on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors have been 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

American Radiator Company, a New Jersey corporation, is an industrial and sales organization whose operations extend from coast to coast. It operates production plants in nine cities located in seven States, and maintains sales offices in virtually all the principal cities in the United States. Five production plants are located in Buffalo, New York. Two of such plants, the Bond and Terminal, are involved in the present proceedings. The Bond Plant, which deals mainly with the manufacture and finishing of heavy boiler and radiation castings, acquires 59.66 per cent of its raw materials (by weight) from outside the State of New York, and sends 83.35 per cent of its finished product outside the State of New York. The Terminal Plant, which produces boiler jackets, water heaters, non-ferrous radiators, refrigerating cabinets, and miscellaneous sheet metal stampings, acquires over 57 per cent of its raw materials (by value)

from outside the State of New York and ships over half of its finished product outside of the State of New York. A large part of the intrastate shipments are to other of the Company's plants there to be assembled together with the products of those plants. Goods are received and shipped by truck and by rail, both plants having spur tracks connecting with the Erie and the Delaware, Lackawanna & Western Railroads.

In October 1937 the Bond Plant employed approximately 900 men, including over 100 supervisory and clerical employees. During the same period the Terminal Plant employed approximately 600 men, also including about 100 supervisory and clerical employees.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Iron, Steel & Tin Workers, Lodge 1199 and Lodge 1629 are labor organizations affiliated with the Committee for Industrial Organization. Steel Workers Organizing Committee, with which the two lodges are also affiliated, is likewise a labor organization affiliated with the Committee for Industrial Organization. Lodge 1199 admits to membership all employees of the Bond Plant, excluding supervisory and clerical employees. Lodge 1629 admits to membership all employees in the Terminal Plant with the same exclusions.

The American Radiator Company Employees Union is a labor organization recently affiliated with National Federated Independent Union, admitting to its membership all employees of the Bond Plant, excluding some clerical and all supervisory employees.

The Cloverleaf Cooperative Union is an unaffiliated labor organization, admitting to its membership all employees of the Terminal Plant, excluding some clerical and all supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

On September 29, 1937, the Lodges sent to the managers of the Bond and Terminal Plants, respectively, letters in which they claimed to represent a majority of the employees in the respective plants and in which they requested a conference for the purpose of collective bargaining. The manager of each plant replied on October 4, 1937, stating that: "Inasmuch as another union notified us several months ago that it represented a majority of our employees, we are unable to grant your request for a conference as a bargaining agent for the majority." The Unions referred to in the letters are the independent unions involved in the present proceedings.

We find that a question has arisen concerning the representation of employees of the Company at the Bond and Terminal plants.

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 as 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

Lodge 1199 seeks a bargaining unit composed of the production and maintenance employees of the Bond Plant, exclusive of clerical and supervisory employees, timekeepers, and production clerks. Lodge 1629 seeks a unit composed of such employees of the Terminal Plant. The two plants, which are approximately 2½ miles apart, employ mostly skilled workers. Although the products of both plants are totally different, many of the processes of production are similar in their nature. While each plant has its own manager, their operations are directed and their labor policies determined from a common office in Detroit. Conceivably, employees of the two plants could be included within the same bargaining unit. However, none of the Buffalo plants have ever joined together for the purpose of collective bargaining and the parties to these present proceedings expressly repudiate any such desire. All the unions here involved have organized on a single plant basis.

The Cloverleaf Cooperative and the Arco Union contend that the timekeepers and production clerks should be included within the bargaining units. The timekeepers, at least those at the Terminal Plant, perform many of the duties of production clerks. It is the function of the latter to see that production proceeds from one machine to another. Both timekeepers and production clerks at times apparently perform supervisory functions. On the basis of the above evidence, we are of the opinion that the duties of timekeepers and production clerks relate them more closely to the management than to the other employees, and hence that they should be excluded from the bargaining units.¹

The Company claims that the units should be composed of all hourly and piece-rate workers and that all salaried employees should be excluded. There is no sufficient showing in the record, however, for a differentiation of employees as to collective bargaining based

¹*Matter of Westinghouse Air Brake Co. and United Electric and Radio Workers of America*, 4 N. L. R. B. 403; *Matter of American Hardware Corp. and United Electrical and Radio Workers of America*, 4 N. L. R. B. 412

solely upon the manner in which the employees are paid. Furthermore, the units asked for by the Company would include certain supervisory and clerical employees.

The independent unions did not oppose the position of the Company and the Lodges that the shipping and yard employees and truckmen should be regarded as production employees. They will herein be so considered.

We find that the production and maintenance employees of the Company at its Bond and Terminal Plants, including shipping and yard employees and truckmen, but excluding supervisory and clerical employees, timekeepers, and production clerks, constitute, in the case of each plant, a unit appropriate for the purposes of collective bargaining, and that said units will insure to such 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 REPRESENTATION

There was introduced in evidence at the hearing the pay roll of the Company at the Bond Plant as of October 23, 1937, showing approximately 890 employees within the appropriate unit. There was also introduced in evidence the pay roll at the Terminal Plant as of October 16, 1937, showing approximately 580 employees within the appropriate unit. Due to a decrease in business, the number of persons working for the Company at the two plants has since decreased considerably. The manager of the Terminal Plant testified that at the date of the hearing his plant had approximately 270 employees on the pay roll.

Lodge 1199 introduced into evidence 518 cards signed by employees at the Bond Plant accepting membership in the Lodge. The Arco Union introduced into evidence 667 cards signed by employees at the Bond Plant applying for membership.²

The president of Lodge 1629 testified that the Lodge had approximately 250 members, who were employees of the Terminal Plant, and introduced into evidence 169 cards signed by employees at the Terminal Plant accepting membership in the Lodge. The Cloverleaf Cooperative introduced into evidence a notebook in which the signatures of 334 employees at the Terminal Plant follow a recital authorizing the Cloverleaf Cooperative to represent the signers for collective bargaining purposes.

² One hundred and ninety-six of these cards were addressed to the National Federated Independent Union and the remaining 471 cards were addressed to "The Independent (sic) Workers Union (Bond Plant Chapter)". On no card was the name of the Arco Union mentioned. Nevertheless the president of the Arco Union testified that both types of cards were used as application blanks for membership in the Arco Union.

There is, however, considerable duplication between the membership claims of Lodge 1199 and the Arco Union, on the one hand, and of Lodge 1629 and the Cloverleaf Cooperative, on the other hand. From all the facts presented, we conclude that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. At the hearing, all the unions stipulated that, if an election was held, pay rolls of the Company for the week ending March 12, 1938, might be used to determine eligibility to vote. They also agreed that some 20 employees in the Terminal Plant who work on a weekly stagger system should be entitled to vote. The Company did not oppose these stipulations.

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 the employees of the American Radiator Company at its Bond and Terminal Plants, 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 at the Bond Plant and at the Terminal Plant, including shipping and yard employees and truckmen, but excluding all supervisory employees, clerical employees, timekeepers, and production clerks, constitute, in the case of each plant, 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 ordered by the Board to ascertain representatives for the purposes of collective bargaining with American Radiator Company, Buffalo, New York, two separate elections by secret ballot, one in the Bond Plant and one in the Terminal Plant, shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as the agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the pro-

duction and maintenance employees of American Radiator Company at its Bond Plant and at its Terminal Plant, Buffalo, New York, who were employed by it during the week ending March 12, 1938, including those employees who were then on a stagger system of employment and including shipping and yard employees and truckmen, but excluding all supervisory employees, clerical employees, timekeepers, and production clerks, and excluding those employees who have since quit or been discharged for cause, to determine whether such employees in the Bond Plant wish to be represented by Amalgamated Association of Iron, Steel & Tin Workers, Lodge No. 1199, affiliated with the Committee for Industrial Organization, or by American Radiator Company Employees Union affiliated with National Federated Independent Union, for the purposes of collective bargaining, or by neither, and whether such employees in the Terminal Plant wish to be represented by Amalgamated Association of Iron, Steel & Tin Workers, Lodge 1629, affiliated with the Committee for Industrial Organization, or by Cloverleaf Cooperative Union, for the purposes of collective bargaining, or by neither.