

In the Matter of CUTLER-HAMMER, INCORPORATED and LOCAL No. 278,
INTERNATIONAL UNION, U. A. W. A., AFFILIATED WITH THE C. I. O.

Case No. R-736.—Decided May 25, 1938

Electrical Equipment Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to grant recognition of union until question of representation is determined by Board; rival organizations—*Unit Appropriate for Collective Bargaining:* production, maintenance, and other employees of two plants, excluding supervisory and main-office clerical employees and employees in the powerhouse and foundry; no controversy as to—*Representatives:* eligibility to participate in choice: employees temporarily laid off to participate in—*Election Ordered—Certification of Representatives.*

Mr. Frederick P. Mett, for the Board.

Mr. Malcolm K. Whyte, of Milwaukee, Wis., for the Company.

Padway, Goldberg & Tarrell, by *Mr. A. G. Goldberg*, of Milwaukee, Wis., for the Machinists, the Moulders, and the Operating Engineers.

Mr. Max E. Geline, of Milwaukee, Wis., for the U. A. W.

Mr. Roman Beck, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 9, 1938, Local 278, International Union, United Automobile Workers of America, herein called the U. A. W., filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Cutler-Hammer, Incorporated, Milwaukee, Wisconsin, 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 April 1, 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 on due notice.

On April 2, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the U. A. W., upon International Association of Machinists, Local 1061, herein called the Machinists, upon International Moulders Union, Local 125, herein called the Moulders, and upon International Union of Operating Engineers, Local 311, herein called the Operating Engineers, labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on April 11, 12, 13, and 14, 1938, at Milwaukee, Wisconsin, before Peter F. Ward, the Trial Examiner duly designated by the Board. The Board, the Company, the U. A. W., the Machinists, the Moulders, and the Operating Engineers 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. At the outset of the hearing the Trial Examiner granted a motion by the U. A. W. to amend the description in its petition of the unit claimed to be appropriate. The ruling is hereby affirmed. 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. After the hearing the U. A. W. and the Machinists filed briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY¹

The Company is engaged in the design, manufacture, assembly, sale, and distribution of various kinds of electrical motor controls and other equipment. It owns and operates three plants in Milwaukee, Wisconsin. Two of these plants are situated at 12th Street and Orchard Street, respectively, and are largely engaged in the manufacture and distribution of the Company's products. The third plant is a foundry devoted exclusively to foundry work. Between 75 and 80 per cent of the raw materials used by the Company in its operations are obtained from sources outside the State of Wisconsin; and 93 per cent of its finished products are shipped out of the State of Wisconsin. In June 1937 the Company employed almost 3,000 employees.

¹ Substantially all of the facts in this section are derived from a stipulation between counsel for the Company and counsel for the Board, supplemented by oral testimony of the Company's works manager.

II. THE ORGANIZATIONS INVOLVED

Local 278, International Union, United Automobile Workers of America is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all production, maintenance, and other employees in the Company's Milwaukee plants, excluding supervisory and main-office clerical employees.

International Association of Machinists, Local 1061, is a labor organization affiliated with the American Federation of Labor. Apparently it admits to membership all production and maintenance workers at the Company's Milwaukee plants, except those who are eligible to belong to the Moulders and to the Operating Engineers, exclusive of supervisory and main-office clerical employees.

International Moulders Union, Local 125, is a labor organization affiliated with the American Federation of Labor, admitting to its membership the workmen employed in the foundry of the Company.

International Union of Operating Engineers, Local 311, is a labor organization affiliated with the American Federation of Labor, admitting to its membership engineers employed in the Company's powerhouse.

III. THE QUESTION CONCERNING REPRESENTATION

In April 1937, the Company entered into a collective bargaining agreement with the Machinists and the Moulders upon the sworn statement of their representative that they represented a substantial majority of the production and maintenance workers in the Company's Milwaukee plants. Although both the Company and the representative of the two unions knew when they executed the agreement that the U. A. W. had a substantial membership among such employees, the Company accepted the sworn statement as satisfactory proof of the majority status of the contracting unions. Shortly after the U. A. W. learned of the agreement, its officers requested the Company to enter into a collective bargaining agreement with it on behalf of its members. The position taken by the Company, as related by its works manager, was ". . . that we had granted sole bargaining rights to the American Federation of Labor, after satisfying ourselves that they represented the majority, and that after having given them the sole bargaining rights, we were not at liberty to execute an additional contract."

The contract with the Machinists and the Moulders expired in April 1938, by virtue of due notice given by the contracting unions that they desired the incorporation of a closed-shop provision in any future agreement and certain other modifications of the terms of the old contract.

The organizational activities of the rival unions continued throughout the duration of the agreement. In its petition, which was filed about a month prior to the expiration of the agreement, the U. A. W. claimed to represent a majority of the employees in the unit described by it to be appropriate. The Machinists challenged the U. A. W.'s claim and asserted that it represented the majority of the employees in the same unit. The Company refused to negotiate with the Machinists concerning the renewal of the contract until the conflicting claims of the unions were determined 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

The unit claimed by the U. A. W. to be appropriate for the purposes of collective bargaining in its petition, as amended, was:

All production, maintenance and other employees of the 12th Street plant and Orchard Street plant of the Company, excluding main office clerical employees and those in a supervisory capacity, and further excluding employees in the powerhouse and foundry of the Company.

Three reasons were advanced by the U. A. W. in support of its motion to amend the description of the appropriate unit in the original petition: (1) that all the employees in the powerhouse are members of the Operating Engineers; (2) that the Moulders represented a great majority of the employees in the foundry, and (3) that the amendment, by excluding those two groups of employees from the unit, was in conformity with the policy of the Board, as revealed in its decisions, of permitting such groups of employees to determine for themselves whether they desired a craft or industrial form of organization. The Machinists and the Company did not question the propriety of the unit claimed by the U. A. W. Under these circumstances we see no reason for deviating from the appropriate unit claimed by the U. A. W.

We find that all production, maintenance, and other employees of the Company at the 12th Street and Orchard Street plants in Mil-

waukee, Wisconsin, excluding supervisory and main-office clerical employees and employees in the powerhouse and foundry of the Company, 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

Both the U. A. W. and the Machinists claimed to represent an overwhelming majority of the employees in the appropriate unit.

The Company introduced in evidence pay-roll schedules indicating in adjoining columns its employees in the appropriate unit as of June 19, 1937, and as of March 5, 1938. By appropriate indications marked in adjacent columns the Machinists designated the employees claimed to be its members at any time and those said to be its members in good standing as of March 5, 1938. An examination of the schedules reveals the following:

Total number of employees as of June 19, 1937.....	2, 975
Total number of employees marked by the Machinists as being members at any time.....	1, 424
Total number of employees as of March 5, 1938.....	1, 817
Total number of employees marked by the Machinists as being members in good standing as of March 5, 1938..	876

An affidavit of the financial secretary of the Machinists annexed to the schedules deposes that 250 additional persons, whose names do not appear on the Company's schedule of employees as of June 19, 1937, were affiliated with the Machinists on that date. Since it is not pertinent to this proceeding to determine whether the Machinists represented a majority of the Company's employees in the appropriate unit as of June 19, 1937, we need not further consider the contentions of the parties on this issue.

The Machinists made a showing of 876 members out of 1817 employees as of March 5, 1938, which is less than a majority. The Machinists claimed an additional 31 members, but even if that claim is accepted, they showed only 907 members out of 1817 employees as of March 5, 1938, which is less than a majority.

The U. A. W. also designated the employees who were its members as of March 5, 1938, by appropriate indications marked in an adjacent column on the Company's schedules. Its showing was 549 members out of 1817 employees, which is less than a majority.

Thus, neither organization showed that it represented a majority of the employees in the appropriate unit as of March 5, 1938. Moreover, there are a great many duplications in their membership showing.

During the hearing, the Machinists had petitions protesting this investigation signed in the Company's plant by 790 of its members, and 250 nonmember employees. It is to be noted that these petitions do not request that the Machinists be certified as the bargaining representative of the signatories. We do not regard such petitions as a satisfactory determination of the question concerning representation. The freedom of choice assured by a secret ballot was lacking in the circumstances under which these petitions were signed. Moreover, it is virtually impossible to eliminate duplications and to check the signatures accurately against the Company's pay roll since they are contained on 80 separate sheets with no schematic arrangement, and many signatures are illegible.

We find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot. Since June 17, 1937, is clearly too remote a date for the purpose of determining eligibility to vote, those eligible to vote shall be the employees in the appropriate unit as of March 5, 1938, excluding those who have since quit or have been discharged for cause, but including those who have since been laid off only temporarily.

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 Cutler-Hammer, Incorporated, Milwaukee, Wisconsin, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. All production, maintenance, and other employees of the Company at its 12th Street and Orchard Street plants in Milwaukee, Wisconsin, excluding supervisory and main-office clerical employees and employees in the powerhouse and foundry of the Company, 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 Cutler-Hammer, Incorporated, Milwaukee, Wisconsin, 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 Twelfth 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, maintenance, and other employees of the Company, employed on March 5, 1938, at its 12th Street and Orchard Street plants in Milwaukee, Wisconsin, excluding supervisory and main-office clerical employees and employees in the powerhouse and foundry of the Company, and excluding those who have since quit or have been discharged for cause, but including those who have since been laid off only temporarily, to determine whether they desire to be represented by Local 278, International Union, United Automobile Workers of America, affiliated with the Committee for Industrial Organization, or by Local 1061, International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

June 27, 1938

On May 25, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted under the direction and supervision of the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) within 15 days from the date of the Direction among the production, maintenance, and other employees of Cutler-Hammer, Incorporated, herein called the Company, on its pay roll for the period ending March 5, 1938, at its Twelfth Street and Orchard Street plants in Milwaukee, Wisconsin, excluding supervisory and main-office clerical employees and employees in the powerhouse and foundry of the Company, and excluding those who have since quit or have been discharged for cause, but including those who have since been laid off only temporarily, to determine whether they desired to be represented by Local 278, International Union, United Automobile Workers of America, affiliated with the Committee for Industrial Organization, or by Local 1061, International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on June 8, 1938, by the said Regional Director. On June 9, 1938, the said Regional Director, acting pursuant to Article III, Sec-

tion 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote.....	1, 810
Total number of ballots cast.....	1, 655
Total number of ballots counted.....	1, 652
Total number of votes in favor of Local 1061, International Association of Machinists, A. F. of L.....	916
Total number of votes in favor of Local #278, International Union, United Automobile Workers of America, C. I. O....	519
Number of votes for neither organization.....	217
Number of blank ballots.....	2
Number of void ballots.....	1
Challenged ballots.....	0

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, 49 Stat. 449, herein called the Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Local 1061, International Association of Machinists, affiliated with the American Federation of Labor, has been designated and selected by a majority of the production, maintenance, and other employees of Cutler-Hammer, Incorporated, at its Twelfth Street and Orchard Street plants in Milwaukee, Wisconsin, excluding supervisory and main-office clerical employees and employees in the powerhouse and foundry of the Company, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Local 1061, International Association of Machinists, affiliated with the American Federation of Labor, 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.