

In the Matter of BOORUM AND PEASE COMPANY and UNITED PAPER WORKERS LOCAL INDUSTRIAL UNION #292 AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION

Case No. R-731.—Decided May 26, 1938

Blank Book, Commercial Forms, and Loose-Leaf Devices Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; controversy concerning appropriate unit; majority status disputed by employer; employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining*: production and maintenance employees, excluding clerical, supervisory, and warehouse employees; desires of employees; dissimilarity of wage scales and hours of employment; eligibility for membership in only organization among employees—*Representatives*: proof of choice: comparison of pay roll with union membership cards; employer's request for election, made subsequent to hearing and after stipulation as to majority representation, held without merit, in absence of evidence of, or claim of, change in majority representation—*Certification of Representatives*: upon proof of majority representation.

Mr. David A. Moscovitz, for the Board.

McKercher & Link, by *Mr. George Link, Jr.*, of New York City, for the Company.

Liebman, Robbins, Pressman & Lieder, of New York City, for the United.

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

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On November 29, 1937, United Paper Workers Local Industrial Union No. 292, herein called the United, 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 Boorum & Pease Company,¹ Brooklyn, New York, 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.

¹ From various papers filed by the Company, it appears that the Company uses the symbol "&" in its name rather than the word "and."

On December 22, 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. The Board further ordered, pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, that this proceeding be consolidated with a case based upon charges against the Company filed by the United, alleging that the Company had committed certain unfair labor practices within the meaning of the Act. On March 16, 1938, the Board ordered that the present proceeding be severed and continued as a separate proceeding.

On January 3, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the United. Pursuant to a subsequent telegraphic notice sent to the Company and to the attorney for the Company and to the attorneys for the United, a hearing was held on March 29, 1938, at Brooklyn, New York, before Herbert A. Lien, the Trial Examiner duly designated by the Board. The Board and the Company 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 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 Company and the United filed memoranda, which have been given due consideration by the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Boorum & Pease Company, a New York corporation, is engaged in the manufacture and sale of loose-leaf and blank books, commercial forms, and loose-leaf devices. All of its production work is conducted in a building in Brooklyn, New York, which is herein referred to as the plant. Approximately 3 blocks distant from the plant, the Company maintains a warehouse in which the products manufactured at the plant are normally stored. The Company uses paper, cardboard, and fabricated products in its manufacturing operations. Approximately 15 per cent of these commodities are purchased from concerns located outside the State of New York.

Approximately 50 per cent of the Company's finished products are shipped to destinations outside the State of New York.

II. THE ORGANIZATION INVOLVED

United Paper Workers Local Industrial Union No. 292 is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees of the Company, excluding clerical, supervisory, and warehouse employees.

III. THE QUESTION CONCERNING REPRESENTATION

In October 1937, a representative of the United conferred with the attorney for the Company for the purpose of negotiating a contract between the Company and its employees. At the conference the Company questioned the United's claim to represent a majority of the employees and refused to recognize it as their exclusive bargaining representative, although the Company indicated that it was willing to recognize and bargain with the United as the representative of its members only. At subsequent conferences there also arose a difference between the parties as to the appropriate bargaining unit.

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 United maintained that the production and maintenance employees at the plant, excluding clerical and supervisory employees, constituted a unit appropriate for the purposes of collective bargaining. The Company contended that the unit should consist of all its employees, including those working in the warehouse.

The parties stipulated as to a number of factors, such as wages and hours of employment, differentiating the production and maintenance employees from the warehouse employees. It was shown that the United at first attempted unsuccessfully to organize all the Company's

employees but shortly thereafter adopted the policy of regarding the warehouse and clerical employees as ineligible to its membership and ceased all efforts to organize them.

It does not appear that any labor organization other than the United claims to represent employees of the Company. By their method of self-organization, the employees have indicated their free choice as to the appropriate unit and no cogent reason has been advanced for selecting a different unit.

We find that the production and maintenance employees of the Company, excluding clerical, supervisory, and warehouse employees, 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

In its petition and at the hearing, the United requested that the Company's pay roll for the week of November 17, 1937, be used as a basis for the determination of representatives. The Company raised no objection to this request at the hearing or in stipulations subsequently entered into between the parties and filed with the Board. By stipulations dated April 18, 1938, and filed with the Board, the parties agreed that, on November 17, 1937, there were approximately 437 employees at the plant, approximately 40 of whom were engaged in clerical work. It is clear that at most there were 397 employees within the appropriate unit on that date. The parties checked the United's membership cards against the Company's November 16, 1937, pay roll and stipulated that 218 of the names on the cards appeared on the pay roll. No question was raised as to the genuineness of any of the signatures of the cards.

It was not until after the close of the hearing and after the stipulations showing the United's majority during the week of November 17, 1937, had been executed by the parties and filed with the Board, that the Company, in a memorandum filed with the Board on April 30, 1938, for the first time requested the Board not to certify a bargaining representative on the basis of the pay roll which had been checked as above set forth, but to conduct an election among those employees who were in its employ on March 29, 1938, the date of the hearing. In its memorandum the Company stated that a decrease in the amount of work had resulted in the discharge of some employees but did not specify their names or the dates of their discharge. The Company's pay roll for the week of March 29, 1938, was not introduced into evidence so that it was not possible to check the United's membership cards against it. Moreover, no evidence

was introduced at the hearing nor was any claim made by the Company in its memorandum that the United had ceased to represent a majority of the employees in the appropriate unit on March 29, 1938. Under the circumstances, we will determine the bargaining representative of the employees on the basis of the Company's pay roll for the week of November 17, 1937.

We find that the United 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 Boorum & Pease Company, Brooklyn, New York, 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 clerical, supervisory, and warehouse employees, 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 Paper Workers Local Industrial Union No. 292 is the exclusive representative of all 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, 49 Stat. 449, 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 Paper Workers Local Industrial Union No. 292 has been designated and selected by a majority of the production and maintenance employees of Boorum & Pease Company, Brooklyn, New York, excluding clerical, supervisory, and warehouse employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, United Paper Workers Local Industrial Union No. 292 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.