

In the Matter of WALKER VEHICLE COMPANY and the AUTOMATIC
TRANSPORTATION COMPANY, DIVISIONS OF THE YALE & TOWNE MANU-
FACTURING COMPANY and WALKER-AUTOMATIC INDEPENDENT LABOR
ASSOCIATION

Case No. R-319.—Decided June 10, 1938

Truck, Crane, Tractor, and Body Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; employer's refusal to grant recognition of union; strike, prior, caused by employer's refusal to recognize representatives—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, including repairmen and truckers, and excluding supervisory employees, draftsmen, engineers (except engineers employed in maintenance), watchmen, and production stock record clerks; dissimilarity of interest—*Prior Election:* voided, on ground that error in printing name of one union in first notice of election may have injured its standing in minds of voters—*Election Ordered*

DECISION

AND

SECOND DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 9, 1937, Walker-Automatic Independent Labor Association, herein called the Association, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Walker Vehicle Company and the Automatic Transportation Company, divisions of the Yale and Towne Manufacturing Company,¹ Chicago, Illinois, 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 12, 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

¹ Erroneously designated in the petition and notice of hearing as "Walker Vehicle-Automatic Transportation Company." At the hearing a motion was granted correcting the designation to read as above.

amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On September 9, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Association, and upon Steel Workers Organizing Committee, for Nira Lodge No. 1328 of the Amalgamated Association of Iron, Steel and Tin Workers of North America,² herein called the Amalgamated, a labor organization claiming to represent employees of the Company. Pursuant to the notice, a hearing was held on September 17 and 18, 1937, at Chicago, Illinois, before Charles B. Bayly, the Trial Examiner duly designated by the Board. All parties were represented by counsel and all 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 examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusion, and acting pursuant to Article III, Section 8, of said Rules and Regulations—Series 1, as amended, issued a Direction of Election³ on November 29, 1937, in which it found that all the production and maintenance employees of the Company at its Chicago, Illinois, plant, excluding the supervisory employees, draftsmen, engineers (except engineers employed in maintenance), and watchmen, constitute a unit appropriate for the purposes of collective bargaining. For the purpose of expediting the election and thus insuring to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law.

On December 13, 1937, and December 31, 1937, the Board issued Amendments⁴ to said Direction of Election in which the Board discussed and decided certain issues raised subsequent to issuance

² Upon motion, this designation of the Amalgamated was granted in Second Amendment to Direction of Election, 4 N. L. R. B. 244. Throughout these proceedings theretofore, the words "Steel Workers Organizing Committee" had not appeared in the designation

³ 4 N. L. R. B. 242.

⁴ 4 N. L. R. B. 243, and 4 N. L. R. B. 244, respectively.

of the Direction of Election. In the first of said Amendments the Board extended the period within which the election was to be held.

Pursuant to the Board's Direction of Election, as amended, an election by secret ballot was conducted on January 8, 1938, by the Regional Director for the Thirteenth Region among the employees of the Company constituting the bargaining unit found appropriate by the Board. Full opportunity was accorded all parties to this proceeding to participate in the conduct of the ballot and to make challenges. On January 11, 1938, the Regional Director issued his Intermediate Report upon the secret ballot, which was duly served upon the parties to this proceeding. Since this Intermediate Report failed to state on what date the election by secret ballot was held, the Regional Director on January 14, 1938, issued an amendment to said Intermediate Report correcting this defect.

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

Total number of eligibles.....	349
Total number of ballots cast.....	337
Necessary to elect.....	169
Total number of ballots cast for the Association.....	131
Total number of ballots cast for the Amalgamated.....	165
Total number of ballots in favor of neither organization.....	29
Total number of challenged ballots.....	12
Total number of blank ballots cast.....	0
Total number of void ballots.....	0

The Association filed objections and exceptions to the Intermediate Report. These objections and exceptions are concerned with the conduct of the election and various rulings of the Regional Director affecting the eligibility of certain employees to vote. On January 16, 1938, the Amalgamated filed a petition requesting that the Board direct a run-off election, provision for which was made in Second Amendment to Direction of Election issued on December 31, 1937. On February 1, 1938, the Association filed a petition, reiterating its objections and exceptions to the election previously filed, and requesting that the election of January 8, 1938, be declared "no contest" and that another election be held. On February 9, 1938, the Amalgamated filed another petition, in answer to that of February 1, 1938, filed by the Association, in which the Amalgamated again requested a run-off election. On March 17, 1938, the Regional Director issued a Supplement to Intermediate Report on Secret Ballot, in which he made his rulings on the 12 challenged ballots cast in said election. Ten of such voters were ruled ineligible, while two were ruled eligible. Objections and exceptions to the Supplement to Intermediate Report, dated March 21, 1938, were filed by the Association in which it was contended inter alia that the Regional Director was in error in ruling that these 10 were ineligible. We shall discuss these rulings more

fully under Section V, hereinafter. On May 31, 1938, the Association filed another petition again setting forth its objections and exceptions and again requesting a new election. For the reason hereinafter set forth, we declare the election of January 8, 1938, to be a nullity and we shall direct that another election be conducted to determine the collective bargaining representative of the employees within the appropriate unit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company⁵ manufactures and sells automatic industrial trucks, cranes, and tractors, Walker Electric Street Trucks and bodies, and Walker bodies.

During the first 8 months of 1937, the Company made purchases of raw materials and finished products valued at approximately \$500,000, of which 35 to 40 per cent, both in value and tonnage, were shipped to the Company from points outside the State of Illinois. These raw materials consisted principally of steel castings, malleable castings, steel plate, rubber, copper wire, lumber, aluminum, brass and copper bearings, lead, drop forgings, paints, and porcelain.

During the same period the Company made sales of its finished products valued at approximately \$1,400,000, about 95 per cent of which were shipped to points outside the State of Illinois.

During the first half of July 1937, the Company employed 465 persons, including salesmen and supervisory and clerical employees.

II. THE ORGANIZATIONS INVOLVED

Walker-Automatic Independent Labor Association is an unaffiliated labor organization incorporated in Illinois, May 17, 1937, which apparently admits to membership all employees of the Company at its Chicago plant, exclusive of foremen, salesmen, officers, and superintendents.

Amalgamated Association of Iron, Steel and Tin Workers of North America is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all production

⁵ Walker Vehicle Company, first incorporated as Automobile Maintenance Company, operated as an Illinois corporation until its dissolution on November 16, 1936. In 1926 the Vehicle Company obtained control of Automatic Transportation Company, Inc., a New York corporation, which also has since been dissolved. The assets of the Vehicle Company, including those of the Transportation Company, were purchased in 1933 by Yale and Towne Manufacturing Company, a Connecticut corporation, and the two dissolved corporations are operated in Chicago, Illinois, as divisions of the Connecticut corporation. The two divisions do not have separate officers and are not considered as separate by the Company. Both divisions have the same production, engineering, and purchasing departments, and they are separate and distinct only in their sales departments.

and maintenance employees of the Company who are paid on an hourly basis.

III. THE QUESTION CONCERNING REPRESENTATION

The Amalgamated was organized in February and March 1937. On March 11, 1937, its committee called upon the general manager of the plant and endeavored to obtain recognition as the bargaining agent of the production and maintenance employees. The general manager was informed that the Amalgamated claimed to represent a majority of such employees. The committee proposed that a written contract between the Amalgamated and the Company be executed, but the Company, by its general manager, refused to enter into any agreement. He refused to recognize the Amalgamated as the bargaining representative of the production and maintenance employees.

On or about April 7, 1937, a meeting of Company employees was called by the Amalgamated and approximately 275 employees attended. The failure and refusal of the Company to recognize the Amalgamated as the bargaining agency and to enter a contract were discussed. There was a motion that the employees strike in order to enforce their demands and upon a vote no more than seven persons expressed opposition to the strike. Accordingly, the strike commenced on April 8, 1937, and continued until April 29, 1937, when about 35 per cent of the employees returned to work. By May 3 approximately 70 per cent had returned, and by May 4 all employees were back at work. The evidence clearly establishes that throughout the strike the Amalgamated committee continued its efforts to obtain recognition and a contract.

During the course of the strike the Association was formed. On July 12 an Association committee called upon the general manager and requested recognition of the Association as the collective bargaining agent of all employees of the Company except those heretofore listed as ineligible to its membership. Various wage increases and certain alterations in then existing working conditions were also requested, some of which were granted about 10 days later at another meeting between the committee and the general manager. However, the Company has refused to recognize the Association. The petition in the instant case was filed by the Association, by its attorney, 3 days before the first conference with the general manager.

We find that a question concerning the representation of employees of the Company has arisen.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find the question concerning representation, which has arisen in connection with the operations of the Company set forth in Section

I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The petition filed in the instant case alleges that the appropriate bargaining unit consists of "all employees excluding department heads, superintendents, shop foremen, and officers of Company." Within the plant there are three departments, namely: production, sales, and accounting. The production department has within itself eight subdepartments, as follows: (1) machine shop, (2) frame shop, (3) assembly department, (4) electrical department, (5) paint department, (6) body department, (7) shipping department, and (8) stock department. Assembling of purchased products, manufacturing, and fabricating are done within the plant. There is no foundry therein.

Both contending organizations are in accord that the appropriate unit is the plant unit. There is a difference of opinion with reference to several types of employees only, principally, clerks, stenographers, office employees, draftsmen, engineers, watchmen, janitors, and truck drivers. In many decisions we have held that the interests and problems of such employees are not sufficiently similar to those of production and maintenance employees to warrant the inclusion of such employees within the same bargaining unit, at least where the labor organization involved, or one of the organizations involved, is opposed to such inclusion.

An examination of the election results previously set forth will show that 12 employees cast challenged ballots. As before related, the Regional Director ruled on these challenged ballots and held that 10 of such employees, being "production stock record clerks," were ineligible to vote and that the remaining two being, respectively, a repairman, Maurice R. Glens, and a trucker, Thomas Hofrichter, were eligible. We find these rulings correct, and we have taken due notice of them in rewording the unit appropriate for the purposes of collective bargaining.

In order to insure to the employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the production and maintenance employees of the Company, including repairmen and truckers, but excluding the supervisory employees, draftsmen, engineers (except engineers employed in maintenance), watchmen, and production stock record clerks, constitute a unit appropriate for the purposes of collective bargaining in respect to

rates of pay, wages, hours of employment, and other conditions of employment.

VI. THE DETERMINATION OF REPRESENTATIVES

The Association introduced in evidence a list of its members, numbering 247, not all of whom are in the unit found to be appropriate. The Amalgamated introduced in evidence a list of members containing 281 names. In view of the number of employees of the Company, 465, it is obvious that there are many duplications of membership in the 2 organizations. Consequently, the Board found it impossible to determine the desires of a majority of the employees in the appropriate unit from the evidence submitted at the hearing, and, therefore, ordered an election.

VII. THE CONDUCT OF THE SECRET BALLOT

In its exceptions to the Intermediate Report and to the conduct of the election, the Association asserts inter alia that (1) it was improperly designated in the first Notice of Election issued by the Regional Director as *Walker's* Automatic Independent Labor Association, which incorrect designation allegedly placed the Association at a disadvantage in the balloting, since before correction a number of the incorrect notices were circulated among the voters; (2) in the first tabulation of the results the Association was shown to have received more votes than the Amalgamated; (3) at certain times during the voting the Association had fewer representatives than the Amalgamated at the polls; and, (4) during the counting of the ballots, there was one more teller representing the Amalgamated than were present on behalf of the Association. We have carefully considered these exceptions and save for the first exception, we do not find that any of them had any substantial effect upon the election.

The Association vigorously contended that the incorrect designation of it had the effect of placing it in an invidious position and stigmatizing it as a company-dominated union. Although the incorrect designation was no more than an inadvertent typographical error, it may have placed an unintended stigma upon the Association in the minds of some voters. Under this circumstance, we believe that a new election is warranted in order that there may be no doubt as to the choice of the employees concerned, and we shall so direct.

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 Walker Vehicle Company and the Auto-

matic Transportation Company, divisions of the Yale & Towne Manufacturing Company, at its Chicago, Illinois, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All the production and maintenance employees of the Company, including repairmen and truckers, who were employed by it during the pay-roll period immediately preceding November 29, 1937, excluding those who have since quit or been discharged for cause, and the supervisory employees, draftsmen, engineers (except engineers employed in maintenance), watchmen, and production stock record clerks, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the 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, 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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Walker Vehicle Company and the Automatic Transportation Company, divisions of the Yale & Towne Manufacturing Company, Chicago, Illinois, 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 Thirteenth 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 production and maintenance employees, including repairmen and truckers, of Walker Vehicle Company and the Automatic Transportation Company, divisions of the Yale & Towne Manufacturing Company, at its Chicago, Illinois, plant, who were employed by it during the pay-roll period immediately preceding November 29, 1937, excluding those who have since quit or been discharged for cause, and the supervisory employees, draftsmen, engineers (except engineers employed in maintenance), watchmen, and production stock record clerks, to determine whether they desire to be represented by Walker-Automatic Independent Labor Association, or by Steel Workers Organizing Committee, for Nira Lodge No. 1328, of the Amalgamated Association of Iron, Steel and Tin Workers of North America, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO SECOND DIRECTION OF ELECTION

June 23, 1938

On June 10, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Second Direction of Election in the above-entitled case, the election to be held within fifteen (15) days from the date of the Direction. Thereafter the Board was advised by its Regional Director for the Thirteenth Region (Chicago, Illinois) that the time allowed in said Direction for conducting the election was not ample in which to notify all persons eligible to cast ballots therein.

In order that this defect may be corrected,

The Board, on its own motion, hereby amends its Second Direction of Election issued on June 10, 1938, by striking therefrom the words "within fifteen (15) days from the date of this Direction," wherever they occur therein, and substituting therefor the words "within twenty-one (21) days from the date of this Direction."