

In the Matter of MARLIN-ROCKWELL CORPORATION and LOCAL No. 338,
UNITED AUTOMOBILE WORKERS OF AMERICA

Case No. R-342

Ball Bearings Manufacturing Industry—Representatives: eligibility to participate in choice: employees laid off because of lack of work—*Employee Status:* employees laid off because of lack of work held to retain employee status—*Election:* Company representatives, presence at: matter for discretion of Board representatives—*Majority Rule:* meaning of: Section 9 (a) interpreted—*Certification of Representatives:* following election.

Mr. Peter J. Crotty, for the Board.

Slee, O'Brian, Hellings, & Ulsh, by *Mr. Dana B. Hellings* and *Mr. John Van Sickle*, of Buffalo, N. Y., for the Company.

Mr. Daniel B. Shortal, of Buffalo, N. Y., for the Union.

Mr. A. Bruce Hunt, Jr., of counsel to the Board.

CERTIFICATION OF REPRESENTATIVES

June 10, 1938

On February 11, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case.¹ The Direction of Election directed that an election by secret ballot be conducted among all the employees of Marlin-Rockwell Corporation, herein called the Company, who were employed at the Jamestown, New York, plant as shown on the pay roll as of September 24, 1937, excluding those who have since quit or been discharged for cause and excluding clerical, supervisory, executive, and sales employees, engineers, draftsmen, and apprentices.

Pursuant to said Decision and Direction of Election, an election by secret ballot has been conducted under the direction and supervision of Henry J. Winters, the Regional Director for the Third Region (Buffalo, New York). On February 26, 1938, the Regional Director, acting pursuant to Article III, Section 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

¹ 5 N. L. R. B. 206.

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

Total number eligible to vote.....	407
Total number of ballots counted.....	330
Ballots in favor of United Automobile Workers of America, Local No. 338.....	175
Ballots against United Automobile Workers of America, Local No. 338.....	155
Void ballots.....	2
Challenged ballots.....	9

Objections and exceptions, dated February 28, 1938, to the balloting and to the Intermediate Report were filed by the Company. These exceptions, as amended at the hearing hereinafter mentioned, are that (1) the number of votes cast for the Union does not constitute a majority of those employees eligible to vote in said election; (2) no representative of the Company was permitted to observe the balloting in order to assure its being conducted in accordance with said Decision and Direction of Election; (3) certain employees within the appropriate unit, but laid off since September 24, 1937, were permitted to vote; and (4) certain persons, who the Company contends were eligible to vote, did vote challenged ballots which were not counted in the final tally.

The Regional Director found that the objections and exceptions raised a substantial and material issue with respect to the conduct of the ballot and, acting pursuant to Article III, Section 9, of the Rules and Regulations, on March 24, 1938, issued a notice of hearing, copies of which were duly served upon the Company and the Union.

Pursuant to the notice, a hearing on said objections and exceptions was held on April 4, 1938, at Buffalo, New York, before Herbert A. Lien, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union 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.

We have fully considered the objections and exceptions filed to the Intermediate Report of the Regional Director and the testimony with respect thereto and we find that they are without merit. The first objection, namely, that the total vote cast in favor of the Union does not constitute a majority of those employees eligible to vote,

has been raised and decided on other occasions.² As to the second objection, we are of the opinion that, under the circumstances presented, the refusal to permit the Company to have a representative at the balloting was not an abuse of discretion on the part of the representatives of the Board.

With respect to the third objection, namely, that persons not employees at the time of the election were allowed to vote, the facts must be stated somewhat at length. Prior to the election the Company furnished to the Board two lists of individuals who were on its pay roll as of September 24, 1937. One list contained the names of persons considered by the Company as eligible to vote. On it were 233 names. The second list contained the names of persons considered by the Company as ineligible to vote and contained 223 names. On this second list were named 2 cleaning women, 6 apprentices, 16 foremen, 25 persons who had quit or else had been discharged for some reason other than lack of work, and 174 persons who had been laid off for lack of work. These lay-offs occurred in October, November, December, and January, particularly near the end of the year 1937. Of the 174 so laid off, 119 voted in the election. The testimony adduced at the hearing of April 4, 1938, indicates that when the 174 men were laid off no commitments were made to any of them by the Company concerning reemployment and that any of them who will later be reemployed will return as new employees.

We believe, however, that those employees who were laid off because of lack of work retained their employee status and clearly had an interest in the election. They were entitled to vote. The business of the Company is seasonal and is largely dependent upon the automotive trade. In other lay-offs many of the 174 employees above-mentioned have been included. They expect, and reasonably so, to be reemployed upon an improvement in business conditions. The Company maintains a list of all men laid off so that they may be called back as needed. The usual policy of the Company is to reemploy those laid off as business conditions warrant. The words "excluding those who have since quit or been discharged for cause" used in the Direction of Election were not intended and should not be construed to exclude employees who were severed from employment because of slack work under such conditions as exist in the instant case.

As stated in the fourth objection, certain employees whose names appear on the eligible list of voters furnished to the Board by the

² *Matter of R. C. A. Manufacturing Company, Inc. and United Electrical & Radio Workers of America*, 2 N. L. R. B. 159. See also *Matter of Interlake Iron Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 4 N. L. R. B. 55

Company were objected to by the Union and cast challenged ballots. Further, certain employees who had been discharged, but for reasons other than lack of work, or who had quit, appeared at the polls, were challenged by an agent of the Board, and were allowed to cast challenged ballots. The ballots were not counted in either instance, and it is unnecessary to consider them in view of the total number thereof. In no way could they affect the final result.

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Automobile Workers of America, Local No. 338, has been selected by a majority of all the employees of Marlin-Rockwell Corporation, at its Jamestown, New York, plant excluding clerical, supervisory, executive, and sales employees, engineers, draftsmen, and apprentices, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, United Automobile Workers of America, Local No. 338, 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.