

In the Matter of MINNEAPOLIS-MOLINE POWER IMPLEMENT COMPANY  
and INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 1037

*Case No. R-701.—Decided June 10, 1938*

*Farm Implement, Machinery, Structural Steel, and Industrial Engine and Parts Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: question of representation not settled by consent election held pursuant to agreement containing provision prohibiting formal electioneering on day of election and failing to establish machinery for settling protests based on alleged violations of that provision—*Unit Appropriate for Collective Bargaining:* production employees, excluding supervisory and clerical employees, timekeepers, assistant foremen, and full-time outside truck drivers; stipulation as to—*Representatives:* eligibility to participate in choice: employees laid off within 60 days prior to date petition filed; 30 days' service with employer—*Election Ordered*

*Mr. Thurlow Smoot, for the Board.*

*Cobb, Hoke, Benson, Krause and Faegre, by Mr. Paul Christopherson and Mr. Donald Robertson, of Minneapolis, Minn., for the Company.*

*Mr. W. A. Heath, of Minneapolis, Minn., for the Machinists.*

*Mr. Ralph L. Helstein, of Minneapolis, Minn., for the United.*

*Miss Ann Landy, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 11, 1938, International Association of Machinists, Local No. 1037, herein called the Machinists, filed with the Regional Director for the Eighteenth Region (Minneapolis, Minnesota) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Minneapolis-Moline Power Implement Company, Hopkins, Minnesota, herein called the Company, and requested 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 March 11, 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.

On March 12, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Machinists, and upon the United Electrical, Radio & Machine Workers of America, Local No. 1138, herein called the United, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 21 and 22, 1938, at Minneapolis, Minnesota, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board, the Company, and the United were represented by counsel. The Machinists was represented by a duly authorized representative. All parties 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 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.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

Minneapolis-Moline Power Implement Company is a Delaware corporation engaged in the manufacture and sale of farm implements and machinery, structural steel, and industrial engines and parts. It has manufacturing plants in Minneapolis, Minnesota; Hopkins, Minnesota; and Moline, Illinois. This proceeding concerns only the plant at Hopkins, Minnesota. The principal raw materials used by the Company at all its plants are steel castings, forgings, lumber, and scrap iron. A considerable portion of these raw materials used at its two plants in Minnesota is obtained outside the State of Minnesota. Approximately 87 per cent of the Company's finished products manufactured at its Hopkins plant are sold and shipped to States other than Minnesota.

The gross volume of the Company's sales for 1937 of the products manufactured at all its plants amounted to \$16,535,508 in value. There are 782 hourly paid employees at the Hopkins plant, 1472 at

the Minneapolis plant, and 516 at the Moline, Illinois, plant. The Company admitted the interstate character of its business.

## II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Local 1037, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all production employees of the Company at its Hopkins plant, excluding supervisory and clerical employees, timekeepers, assistant foremen, and outside truck drivers.

The United Electrical, Radio and Machine Workers of America, Local No. 1138, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership the same classes of employees of the Company as the Machinists.

## III. THE QUESTION CONCERNING REPRESENTATION

On November 16, 1937, the Machinists filed with the Regional Director for the Eighteenth Region a petition requesting an investigation and certification of representatives of employees of the Company at its Minneapolis and Hopkins plants, alleging that the employees, with certain specified exceptions, at each plant constituted a separate appropriate bargaining unit. On December 6, 1937, the two rival unions, the Machinists and the United, reached an agreement with the Company for the holding of a consent election at each plant under the supervision of the Regional Director. The consent elections were conducted separately for each plant on December 22, 1937. At the Minneapolis plant the consent election resulted in a decisive victory for the United. At the Hopkins plant the Machinists won the consent election by a close margin of 15 votes. The losing organization at each plant promptly protested the result.

Under the terms of the agreement for the holding of the consent election, the protests of each union charging interference, coercion, and intimidation by the opposing union were referred to an arbiter appointed by the Regional Director. Upon the conclusion of hearings on the protests, the arbiter found that the acts of the Machinists in distributing pamphlets branding the United as a communist organization and threatening the employees with the loss of their jobs as a result of a boycott against a C. I. O. plant constituted violation of the agreement. He recommended the certification of the United as the exclusive bargaining representative of the employees at the Minneapolis plant and the holding of a new election among the employees at the Hopkins plant.

As a result of the arbiter's report a second consent election to be held on February 10, 1938, at the Hopkins plant was agreed upon

by all the parties. A provision prohibiting formal electioneering by either union on the day of the election was inserted in the agreement and the clause providing for an arbiter to rule upon protests was deleted. Seven hundred and two employees of the Hopkins plant voted in the second consent election held on February 10, 1938. Two hundred and seventy-two votes were cast for the Machinists and 430 for the United. The Machinists immediately filed a protest and on March 11, 1938, it filed the petition in this case. The Machinists claim that the United violated the provision in the agreement prohibiting electioneering on the day of the election. It is not our function to pass upon the merits of the Machinists' protest, and we shall not do so.

Since the consent election agreement contained a provision prohibiting formal electioneering on the day of the election and failed to establish machinery for settling protests based on alleged violations of that provision, the question of which union is the exclusive representative of the employees at the Hopkins plant still remains unsettled.

We find that a question has arisen concerning representation of employees of the Company at its Hopkins plant.

#### 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 at its Hopkins plant, 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

All the parties stipulated that an appropriate unit consisted of all production employees of the Company at its Hopkins plant, excluding supervisory and clerical employees, timekeepers, assistant foremen, and full-time outside truck drivers engaged in delivering products outside the Hopkins plant, but the United noted a reservation of its right to raise the question of combining the employees of the Hopkins and Minneapolis plants into a single unit in the future.

We find that all production employees of the Company at its Hopkins plant, excluding supervisory and clerical employees, timekeepers, assistant foremen, and full-time outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining and that said unit shall insure the employees of the Company at its Hopkins

plant 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

At the hearing the United introduced in evidence 24 petitions circulated in the Hopkins plant by its members shortly after the second consent election was held. In these petitions a majority of the Company's employees at the Hopkins plant reaffirmed their desire to be represented by the United, but in view of the unsettled condition arising out of the two protested consent elections we find that an election by secret ballot, directed by the Board and conducted by its agents, is necessary to resolve the question concerning representation.

All the parties agreed that those eligible to vote in the event that the Board directed an election should be the employees listed on the Company's pay roll for March 11, 1938, who have had 30 days of service with the Company prior to that date. The United further requested that employees who were laid off within 60 days prior to March 11, 1938, and who have worked for the Company for at least 30 days prior to their lay-off should also be eligible to vote. The Company maintains a seniority list on the basis of which these employees will return to work. We are of the opinion that these employees are entitled to vote in the election. Accordingly, those eligible to vote shall be (1) the employees listed on the Company's pay roll for March 11, 1938, who have had 30 days of service with the Company prior to that date and (2) employees who were laid off within 60 days prior to March 11, 1938, and who have worked for the Company for at least 30 days prior to their lay-off.

On the basis of the above findings of fact and upon the entire record in the proceeding, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Minneapolis-Moline Power Implement Company, Hopkins, Minnesota, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. All production employees of the Company at its Hopkins plant, exclusive of clerical and supervisory employees, timekeepers, assistant foremen, and full-time outside truck drivers engaged in delivering products outside of the plant, 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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Minneapolis-Moline Power Implement Company, Hopkins, Minnesota, 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 Eighteenth 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 employees of the Company who were employed by the Company at its Hopkins plant during the pay-roll period ending March 11, 1938, and who have had thirty (30) days of service with the Company prior to that date, including employees who were laid off within sixty (60) days prior to March 11, 1938, and who have had thirty (30) days service with the Company prior to their lay-off, exclusive of clerical and supervisory employees, time-keepers, assistant foremen, and full-time outside truck drivers engaged in delivering products outside of the plant, and those employees who have since quit or have been discharged for cause to determine whether they desire to be represented by International Association of Machinists, Local 1037, affiliated with the American Federation of Labor, or by United Electrical, Radio and Machine Workers of America, Local No. 1138, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.