

In the Matter of RICHARDSON COMPANY and EMPLOYEES UNION

Case No. R-738.—Decided June 23, 1938

Battery Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to recognize union as exclusive bargaining agent until question of representation is determined by Board—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding foremen, other supervisory employees, clerical employees, and watchmen; stipulation as to; prior Decision of Board—*Representatives:* proof of choice: comparison of pay roll and union membership application cards—*Certification of Representatives:* upon proof of majority representation.

Mr. Lester M. Levin, for the Board.

Mr. Carl Lehmann, of Cincinnati, Ohio, for the Company.

Mr. William C. Erbecker, of Cincinnati, Ohio, for the Union.

Mr. Edwin L. Swope, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On January 10, 1938, Employees Union, herein called the Union, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Richardson Company, Indianapolis, Indiana, 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 January 31, 1938, the Union filed an amended petition setting forth additional facts. On April 12, 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 April 30, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Union.

upon United Automobile Workers of America, and upon Federal Labor Union 21197, labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on May 9, 1938, at Indianapolis, Indiana, before James M. Brown, 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 the parties. United Automobile Workers of America and Federal Labor Union, No. 21197 did not appear at the hearing. 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 these rulings 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

Counsel for the Board and counsel for the Company entered into a stipulation concerning the business of the Company, which was introduced into evidence during the hearing. Upon the basis of this stipulation we hereby find as follows:

The Company is and has been since March 1, 1898, a corporation duly organized under and existing by virtue of the laws of the State of Ohio, with its principal office located at Lockland, Ohio, and has since that time qualified to do business in the State of Indiana, and other States, as a foreign corporation and operates various plants in Melrose Park, Illinois; Indianapolis, Indiana; New Brunswick, New Jersey. During the month of May 1933, it started the operation of a plant located at 20th and Olney Streets, Indianapolis, Indiana, and has since said date employed from about 200 to 275 employees in said plant.

The Company is engaged in the manufacture, sale, and distribution of molded products. At its Indianapolis plant the Company manufactures chiefly battery cases, covers, and vents.

The raw materials used in the manufacturing operations at the Indianapolis plant are as follows: Reclaimed rubber, crude rubber, sulphur, asphalt, clay, fillers, softeners, lime, and other materials. During the year 1937 more than 50 per cent of said raw materials in terms of dollars and cents used at its Indianapolis plant were shipped to it from points and places outside the State of Indiana.

During the year 1937 more than 50 per cent of the annual output of the Company from its Indianapolis plant, which amounts to approximately \$500,000 per annum in terms of dollars and cents was shipped from said plant to customers located outside the State of Indiana. The bulk of its said finished products is further processed or assembled by its customers and shipped by them throughout the States of the United States.

Most of the Company's finished products are shipped direct to its customers by common carriers, either rail or independent truck operators.

The Company employs salesmen who travel throughout the United States receiving orders for goods produced by the Company at its various plants, including its Indianapolis plant, and the Company has advertised its products in various trade journals having a nationwide circulation.

This proceeding involves only the Company's Indianapolis plant.

II. THE ORGANIZATION INVOLVED

Employees Union is an unaffiliated labor organization admitting to its membership production and maintenance employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 11, 1938, the Board directed that an election be held among the production and maintenance employees of the Company at its Indianapolis plant to determine whether they desired to be represented by Local Union No. 442, United Automobile Workers of America, affiliated with the Committee for Industrial Organization, or Federal Labor Union No. 21197, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.¹ The election was conducted on January 26, 1938. The results showed that neither of the above Unions received a majority and the Board ordered that the petition for investigation and certification of representatives which had been filed by Local Union No. 442, United Automobile Workers of America be dismissed.²

The Union was organized after the hearing in the above-mentioned case and prior to election and now claims to represent a majority of the employees in the Company's plant at Indianapolis, Indiana. The Company has indicated its unwillingness to recognize the Union as the exclusive bargaining agent of its production and

¹ See 4 N. L. R. B. 835.

² See 5 N. L. R. B. 295.

maintenance employees, unless the Board certifies that the Union represents a majority of those employees.

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 Union in its petition, as amended, claimed that all maintenance and production employees of the Company constituted a unit appropriate for the purposes of collective bargaining. It was stipulated at the hearing by counsel for the Company and counsel for the Union that the production and maintenance employees of the Company, at its Indianapolis, Indiana, plant, exclusive of supervisory and clerical employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining.

Inasmuch as this is the same unit which was found to be appropriate by us in the previous case³ involving the Company, we see no reason for changing the unit and therefore find that the production and maintenance employees of the Company at its Indianapolis, Indiana, plant, excluding foremen, other supervisory employees, clerical employees, and watchmen, 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 collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

There was introduced in evidence at the hearing a list of employees of the Company at the Indianapolis plant as of the pay-roll period ending February 5, 1938. It was agreed by all parties that this list should be used as a basis for the determination of the representative of the employees. The list included the foremen, watchmen, and office workers who, we have found, should not be included

³ See 4 N. L. R. B. 835.

within the bargaining unit. After excluding their names from the list it contains the names of 194 employees at the Indianapolis plant within the appropriate unit as of the pay-roll period ending February 5.

The Union submitted in evidence 120 membership application cards. The Company did not question the authenticity of the cards or make any other objection to them. A comparison of such cards and the Company's list of employees as of February 5, 1938, revised as indicated above, shows that 111 employees whose names appear on the application cards were employed within the appropriate unit at the Indianapolis plant on February 5, 1938. Four of the signers could not be identified as employees of the Company. Five cards were signed by persons who are designated on the list of employees as foremen and watchmen. Eliminating these nine cards, the evidence clearly establishes that 111 of the 194 within the appropriate unit desire representation by the Union.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purpose 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 Richardson Company, Indianapolis, Indiana, 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 at its Indianapolis, Indiana, plant, excluding foremen, other supervisory employees, clerical employees, and watchmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (c) of the National Labor Relations Act.
3. Employees Union is the exclusive representative of all the 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, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Employees Union has been designated and selected by a majority of the production and maintenance employees of Richardson Company, Indianapolis, Indiana, excluding foremen, other supervisory employees, clerical employees, and watchmen, as their representative for the purpose of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Employees Union 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.