

In the Matter of FLEXO PRODUCTS CORPORATION and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-713

Case No. R-709.—Decided June 24, 1938

Lamp Manufacturing Industry—Investigation of Representatives: question concerning representation of employees, admitted in answer to petition—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, including foremen, assistant foremen, foreladies, assistant foreladies, and shipping clerks, and excluding clerical and office employees; no controversy as to—*Employee:* irregular and intermittent employment—*Election Ordered*

Mr. Hyman A. Schulson, for the Board.

Mr. Lawrence J. Dahlgren, of Chicago, Ill., for the Company.

Mr. B. A. Sapoznik, of Chicago, Ill., for the Union.

Miss Margaret M. Farmer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 23, 1938, International Brotherhood of Electrical Workers, Local B-713, herein called the Union, 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 Flexo Products Corporation, 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 April 20, 1938, the Company filed an answer to the petition, denying that the Union represented a majority of the Company's employees within an appropriate unit and admitting that a question concerning representation had arisen. On March 4, 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 14, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon

the Union. Pursuant to the notice, a hearing was held on April 21, 1938, at Chicago, Illinois, before Gustaf B. Erickson, 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 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

Flexo Products Corporation was incorporated in 1931 under the laws of the State of Illinois and maintains its principal place of business in Chicago, Illinois. It is engaged in the manufacture and sale of table lamps, floor lamps, parchment and fabric shades. It also jobs paper, wax, oils, wire and wire products, lamp shade supplies, art reproductions, and other commodities.

The approximate total value of the chief raw material purchases made by the Company during 1937 was \$70,892.76. Of this amount 44.78 per cent was shipped to the Company from points outside the State of Illinois. During this period the sales of finished products manufactured by the Company amounted to \$205,650.88. Of this sum 61 per cent represented sales to out-of-State customers.

The Company maintains a force of 20 salesmen operating throughout the United States. It also engages in a limited amount of advertising in trade journals having a semi-national circulation.

The Company considers approximately 50 persons as production and maintenance employees. All but one of these employees are employed irregularly and intermittently.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers Local B-713 is a labor organization affiliated with the American Federation of Labor, admitting to its membership all shop electrical workers in Chicago, Illinois, and vicinity.

III. THE QUESTION CONCERNING REPRESENTATION

On February 16, 18, and 23, 1938, conferences took place between the Union and the Company. The Union claims that upon each of these occasions, it stated that it represented a majority of the Com-

pany's employees and demanded recognition as their collective bargaining agent. The Company stated that, although it has been at all times ready and willing to recognize as collective bargaining agent any group which could prove that it represented a majority of the employees, the Union had failed to produce proof that it represented such a majority, and has neither requested recognition as collective bargaining agent nor made any demands for the negotiation of a collective bargaining agreement. We note that despite this testimony, the Company in its answer admitted the existence of a question concerning the representation of its employees.

In view of the admitted holding of conferences between the Union and the Company and the latter's admission of the existence of a question concerning representation, we find that a question has arisen concerning the representation of the 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 and the Company are agreed that the appropriate bargaining unit should include all production and maintenance employees of the Company, including foremen, assistant foremen, foreladies, assistant foreladies, and shipping clerks, and excluding clerical and office workers.

The record shows that all but one of the employees in the Company work irregularly and intermittently. The Company maintains a list of persons whom it considers employees and upon whom it calls when business warrants an increase in working force. According to a list submitted in evidence by the Company, certain of these individuals worked as little as 3 days during 1937, and as little as 11 days during the first 4 months of 1938.

The Union contends that the appropriate bargaining unit should consist of the 47 persons whom both the Company and the Union agreed were production and maintenance employees on February 17, 1938.

These 47 employees were identified as follows: The names of 40 persons appear on the pay roll of February 17, 1938, submitted in evidence by the Company; the names of 6 persons temporarily laid

off on this date, namely, Mrs. O. M. Peterson, Joseph Restivo, Michael Scoglielli, John Szwede, Hugo Wyman, and Muriel Hannor, were supplied by representatives of the Company at the hearing; the name of one person, Cecelia Skanarak, also temporarily laid off on this date, was supplied by the Union at the hearing.

The Company contends that between February 17, 1938, and the date of the hearing, 6 of the above-named 47 persons had ceased to be employees of the Company and should not be included in the unit. It defines an employee as a worker who is at all times instantly available. It maintains that 4 had proved themselves not to be available when their services were required and that two had quit of their own accord. Representatives of the Company testified that two of these individuals, Michael Scoglielli and Anthony Mazur, work in several factories and are therefore not always "on call" when needed. No claim is made that this situation has arisen since February 17, 1938, or that the Company is unwilling to employ these men when possible. We are of the opinion that they should be included in the unit.

The Company expressed some doubt as to the status of Guerdon Davey. It maintained that it had recently made three unsuccessful attempts to reach Davey by telephone and had finally transferred another employee to his place. A fourth attempt to reach him was successful, but its purpose was to inform him of a possible job in another factory. It appears that Davey has been employed intermittently for 4 years, that he is a valuable workman, and that he would be called in the future when needed. Davey should be included in the unit.

The Company asserted that Michael Wright, sometimes called Michael Wurschi, has quit his employment of his own accord. It appears that Wright has been employed intermittently for 6 years. He was informed on a certain Friday evening that work was slack and that he should not report until the following Tuesday. Wright, who saw no evidence that work was slow, was angry and did not report on Tuesday. The Company called him by telephone, whereupon he demanded assurance of steady employment and pay for the preceding Saturday and Monday. The Company was unwilling to agree and transferred another employee to his place. A few days later, when Wright went to the factory to recover his brushes and other property, he conferred with the secretary of the Company and was offered piece work. He made a counterproposal and testified that at the time of the hearing he was waiting to learn upon what basis the Company would call him back. In view of the length of time this employee has been with the Company, the intermittent and irregular nature of all the employment in this factory, and the ex-

pressed willingness on the part of the Company to call him back upon some basis, we find that Wright should be included in the unit.

Representatives of the Company testified that they had made an unsuccessful attempt to call Tony Bruno back to work and had later learned that he had left the city to return to art school. It also stated that Betty Stemper had obtained permanent employment elsewhere and had personally so informed an officer of the Company. This testimony was not challenged and we shall, therefore, exclude Tony Bruno and Betty Stemper from the unit.

We find that the production and maintenance employees, including foremen, assistant foremen, foreladies, assistant foreladies, and shipping clerks, and excluding clerical and office 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.

We also find that as of the time of the hearing the appropriate unit consisted of 45 employees.

VI. THE DETERMINATION OF REPRESENTATIVES

We have determined that at the time of the hearing there were 45 employees within the unit found to be appropriate for the purposes of collective bargaining. The Union submitted in evidence 23 membership cards allegedly signed by employees within this unit. The Company admitted the genuineness of the signatures on 19 of these cards and contested the genuineness of 5. Pay checks endorsed by the 5 challenged individuals were introduced in evidence for the purpose of comparison by the Board. In this state of the evidence we are unable to find that the Union has clearly established that it represents a majority of the employees in the appropriate unit. We find that the question concerning representation which has arisen can best be resolved by the holding of an election by secret ballot. Those eligible to vote in the election shall be the 45 persons whom we have found in Section V above to be in the appropriate unit as of the time of the hearing.

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 Flexo Products Corporation, Chicago, Illinois, 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, including foremen, assistant foremen, foreladies, assistant foreladies, and shipping clerks, and excluding clerical and office employees, 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, 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 Flexo Products Corporation, 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 the production and maintenance employees of Flexo Products Corporation, including foremen, assistant foremen, foreladies, assistant foreladies, and shipping clerks, whose names appear on the Company's pay roll of February 17, 1938, and in addition the following employees: Michael Scoglielli, Mrs. O. M. Peterson, Joseph Restivo, John Szwede, Hugo Wyman, Muriel Hannor, and Cecelia Skanarak, excluding clerical and office employees and also Tony Bruno, Betty Stemper, and any other employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Brotherhood of Electrical Workers Local B-713 for the purposes of collective bargaining.