

In the Matter of BLACKSTONE MANUFACTURING COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1240, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

*Case No. R-758.—Decided June 24, 1938*

*Laundry Machinery Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: employer's refusal to recognize union as sole bargaining agency until question of representation is determined by Board—*Uni. Appropriate for Collective Bargaining:* all employees, except supervisory and clerical workers; no controversy as to—*Representatives:* proof of choice: union authorization cards—*Certification of Representatives:* upon proof of majority representation.

*Mr. Peter J. Crotty and Mr. Edward D. Flaherty, for the Board.*

*Mr. Russell Rogerson, of Jamestown, N. Y., for the Company.*

*Mr. M. A. Bissell, of Jamestown, N. Y., for the Association.*

*Mr. David Rein, of counsel to the Board.*

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On March 23, 1938, International Association of Machinists, Lodge 1240, affiliated with the American Federation of Labor, herein called the Machinists, filed with the Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Blackstone Manufacturing Company, Jamestown, New York, 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 25, 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.

On May 4, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Machinists. Pursuant to the notice, a hearing was begun on May 13, 1938, at Jamestown, New York, before Wright Clark, the Trial Examiner duly designated by the Board. Due to the illness of the Trial Examiner the hearing was adjourned on May 14 and resumed on May 20 at the same place before Webster Powell, the Trial Examiner duly designated by the Board to replace Wright Clark. The Board, the Company, and the Machinists 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 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

The Company is a corporation organized under the laws of the State of New York. It is engaged in the manufacture of laundry appliances. The respondent uses as raw materials tubs, ringers, rubber goods, and sheet metal. More than 50 per cent of these materials are obtained from outside the State of New York. The Company advertises its products in the trade journal "Electrical Merchandising," which has a national circulation, and more than 50 per cent of the Company's finished products are sold outside of the State of New York.

##### II. THE ORGANIZATION INVOLVED

International Association of Machinists, Lodge 1240, is a labor organization affiliated with the American Federation of Labor. The Machinists admits to membership all production and maintenance workers employed by the Company, and includes within its definition of production and maintenance workers all employees of the Company with the exception of supervisory and clerical employees.

##### III. THE QUESTION CONCERNING REPRESENTATION

On April 15, 1938, the Machinists sent a registered letter to the Company requesting it to meet with the Machinists as the sole bargaining agency for all production and maintenance workers employed

by the Company. The Machinists received no reply from the Company to this request. At the hearing the Company stated that it desired a determination of the representatives of its employees by an election conducted by the Board.

We find that a question has arisen concerning the 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 president of the Machinists testified that an appropriate bargaining unit should include all production and maintenance workers, which he defined as all the employees of the Company, except supervisory and clerical workers. It appears that no other labor organization either claims jurisdiction over any of the Company's employees or has attempted to organize them. The Company did not dispute the position of the Machinists as to the appropriate unit.

We find that all the employees of the Company, except supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the 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.

#### VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the president of the Machinists testified that on March 23, 1938, the Company had in its employ 163 employees, 13 of whom were clerical and supervisory employees. He further testified that on May 11 there were 123 persons in the Company's employ, including 12 supervisory and clerical employees. These figures were based on a count made by the witness on these dates of the employees' cards kept by the respondent in a rack near the time clock. The Company introduced no evidence to challenge this testimony. Moreover, it refused to produce any pay-roll lists at the hearing. Under these circumstances we will adopt the figures of the president of the Machinists as accurate.

The Machinists introduced in evidence 121 cards signed by employees authorizing the Machinists to represent them for the purposes of collective bargaining. All the cards were signed within a period of 2 weeks prior to the hearing. Two officers of the Machinists testified that they personally witnessed the signing of all the cards. This testimony was not contradicted by the Company. Counsel for the Company refused to examine the cards, but requested the issuance of subpoenas for the 121 persons whose names appeared on the cards. The Trial Examiner took this request under advisement. In view of the Company's refusal to examine the cards, its failure to contradict the testimony as to the genuineness of the signatures, and its refusal to produce a pay roll against which the cards could be checked, we feel that its request for subpoenas was made merely to obstruct the proceeding. Its request is hereby denied.

The evidence shows that a majority of the employees in the appropriate unit have designated the Machinists as their bargaining representative, whether we take the number of employees on March 23, 1938, or May 11, 1938. As of the former date, 121 out of 150 employees in the appropriate unit have designated the Machinists as their bargaining representative. As of the latter date, uncontradicted evidence shows that at least 90 out of 111 employees in the appropriate unit have designated the Machinists as their bargaining representative.

We find that the Machinists has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes 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 Blackstone Manufacturing Company, Jamestown, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the employees of Blackstone Manufacturing Company, except supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. International Association of Machinists, Lodge 1240, 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 International Association of Machinists, Lodge 1240, has been designated and selected by a majority of all the employees of Blackstone Manufacturing Company, Jamestown, New York, except supervisory and clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Association of Machinists, Lodge 1240, 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.