

In the Matter of THE BABCOCK & WILCOX COMPANY and FEDERAL
LABOR UNION No. 20186

Case No. R-841.—Decided July 22, 1938

Boiler Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; employer's refusal to recognize union as exclusive bargaining agent—*Unit Appropriate for Collective Bargaining:* all hourly paid employees, including supervisors paid on hourly wage basis, excluding clerical employees and supervisors paid on salary basis; stipulation as to—*Representatives:* proof of choice; comparison of union membership application cards with pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. Peter Di Leone, for the Board.

Mr. B. W. Bierce, of Akron, Ohio, for the Company.

Mr. Hiram G. Cartmel and *Mr. J. C. Waddell*, of Barberton, Ohio for the Union.

Mr. William F. Guffey, Jr., of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On April 28, 1938, Federal Labor Union No. 20186, herein called the Union, filed with the Regional Director for the Eighth Region, (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Babcock & Wilcox Company, Barberton, Ohio, 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 May 21, 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 June 2, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union.

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Pursuant to the notice, a hearing was held on June 16, 1938, at Barberton, Ohio, before Wright Clark, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the Union was represented by its president and its financial secretary and treasurer, and all 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.

No motions or objections to the admission of evidence were made during the course of the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Babcock & Wilcox Company was incorporated under the laws of the State of New Jersey in April 1881. It has two subsidiaries, The Babcock & Wilcox Tube Co., Beaver Falls, Pennsylvania, and National Drill & Manufacturing Co., New York City. The Company is engaged in the manufacture and sale of boilers and auxiliary products and in the erection and servicing of its products. It has plants in Barberton, Ohio; Bayonne, New Jersey; Fullerton, Pennsylvania; and Augusta, Georgia.

The plant at Barberton, Ohio, herein called the Barberton plant, is the only plant involved in this proceeding. It is engaged chiefly in the manufacture of stationary boilers for electric power and light, navy and merchant marine boilers, grinding-mills, oil burners, and alloy castings. The Company has no distributors or dealers who stock its products, but it does have several commission agents in various sections of the country. Practically all the products manufactured at the Barberton plant are made to special order.

The principal raw materials used by the Company are steel plates and tubes. In 1937 purchases of raw materials for use at Barberton, Ohio, and Bayonne, New Jersey, and for shipment direct to customers amounted to approximately \$11,000,000. More than 50 per cent of the raw materials used at the Barberton plant are shipped to it from points outside the State of Ohio. The Company ranks first in the United States in the sale of boilers and accessories. In 1937 sales of boilers and auxiliaries, including erections and repairs at customers' plants, amounted to approximately \$30,000,000. Approximately 90 per cent of the products manufactured at the Barberton plant are shipped to points outside the State of Ohio.

The Company employs approximately 1,800 employees at its Barberton, Ohio, plant.

II. THE ORGANIZATION INVOLVED

Federal Labor Union No. 20186 is a labor organization affiliated with the American Federation of Labor, admitting to its membership all employees of the Company's Barberton plant paid on an hourly wage rate, except clerical employees and supervisors paid on a salary basis.

III. THE QUESTION CONCERNING REPRESENTATION

The Union began organizing the employees at the Barberton plant in the early part of March 1936. Sometime prior to June 14, 1936, the Union requested the Company to recognize it as the representative of the employees at the Barberton plant for the purpose of bargaining concerning hours, wages, and working conditions. The Company refused to accede to this request and on June 14, 1936, the Union called a strike and the plant was picketed. Thereafter the Company sent to the president of the Union a statement of its policies and rules governing employment. This statement of policy was dated June 26, 1936, was to be effective for a period of 1 year, was signed by the superintendent of the Barberton plant, but did not grant recognition to the Union. Relying on the Company's statement of policy the employees returned to work June 29, 1936.

Before the expiration date of the Company's statement of policy, the Company and the Union began negotiations which resulted in an agreement signed by both parties. This agreement recognized the Union as the representative of its members and was to be effective for 1 year beginning April 11, 1937. During negotiations in April 1938 for an agreement for 1938, the Union demanded recognition as sole collective bargaining agent for the hourly wage employees at the Barberton plant. The Company refused so to recognize the Union and no agreement for 1938 has been reached. Although the 1937 agreement had by its terms expired at the time the petition was filed, the Company was operating under this agreement at the time of the hearing, June 16, 1938, by virtue of an understanding with the Union to continue operations under it until a 1938 agreement is reached.

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 and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Union claimed in its petition that all hourly paid employees at the Barberton plant constitute a unit appropriate for the purposes of collective bargaining. At the hearing the parties stipulated that all hourly paid employees, including hourly paid supervisors and excluding clerical employees and supervisors paid on a salary basis constitute a unit appropriate for the purposes of collective bargaining. We see no reason for departing from this unit.

We find that all hourly paid employees of the Company at its Barberton, Ohio, plant, including hourly paid supervisors and excluding clerical employees and supervisors paid on a salary basis constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company at its Barberton, Ohio, 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

In its petition the Union claims to represent approximately 1,400 employees out of approximately 1,800 employees in the appropriate bargaining unit. At the hearing the parties stipulated that the Company's pay roll of April 30, 1938, should be used as the basis for determining the question concerning representation. This pay roll discloses that there are 1,779 employees in the appropriate unit. The parties by stipulation waived the introduction of evidence of the Union membership cards; and in lieu thereof the affidavit of Walter E. Taag, Field Examiner for the Board, setting forth the results of a comparison of Union membership cards with the Company's pay roll of April 30, 1938, was received in evidence for the purpose of showing the number of Union members in the Company's employ on that date. This affidavit discloses that of the 1,779 employees in the appropriate unit on April 30, 1938, 1,310 had signed membership cards and were members in good standing of 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 purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purpose 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 The Babcock & Wilcox Company, Barberton, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All hourly paid employees of the Company at its Barberton, Ohio, plant, including hourly paid supervisors and excluding clerical employees and supervisors paid on a salary basis, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Federal Labor Union No. 20186 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 Federal Labor Union No. 20186 has been designated and selected by a majority of all hourly paid employees of The Babcock & Wilcox Company, Barberton, Ohio, at its Barberton, Ohio, plant, including hourly paid supervisors and excluding clerical employees and supervisors paid on a salary basis, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Federal Labor Union No. 20186 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.