

In the Matter of METROPOLITAN ENGINEERING CO. and METROPOLITAN DEVICE CORP. and LOCAL NO. 1224 OF UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA

In the Matter of METROPOLITAN DEVICE CORP. and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 3

Cases Nos. R-818 and R-820, respectively.—Decided July 28, 1938

Steel Products Manufacturing; Electrical Products Manufacturing Industry—Investigation of Representatives: question concerning representation of employees: agreement to hold election by employer and contesting unions: petition for intervention denied where filed by organization found to be company-dominated in prior Board Decision—*Umt Appropriate for Collective Bargaining:* production, maintenance, and shipping employees, excluding salesmen, guards, watchmen, research workers, and office, clerical and supervisory employees; no controversy as to—*Election Ordered:* company-dominated union excluded from ballot.

Mr. Albert Ornstein, for the Board.

Mr. Joseph A. McNamara, of New York City, for the Companies.

Mr. Edward J. McAlinn and *Mr. Joe J. Duffy*, of New York City, for the I.B.E.W.

Mr. Frank Scheiner, by *Mr. David Scribner*, of New York City, for the U.E.R.W.

Mr. Francis D. Saitta, of New York City, for the Association.

Mr. David Rein, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 18, 1938, International Brotherhood of Electrical Workers, Local Union No. 3, affiliated with the American Federation of Labor, herein referred to as the I. B. E. W., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Metropolitan Device Corp., Brooklyn, New York, and requesting an investigation and certification of

8 N. L. R. B., No. 70.

representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On March 19, 1938, Local No. 1224 of United Electrical, Radio, and Machine Workers of America, herein referred to as the U. E. R. W., filed with the Regional Director a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Metropolitan Engineering Co. and Metropolitan Device Corp., Brooklyn, New York, herein called the Companies, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act.

On April 26, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Sections 3 and 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of the cases and authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon due notice.

On May 26, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Companies, the I. B. E. W. and the U. E. R. W. On June 2, 1938, Metropolitan Employees Association, herein called the Association, claiming to represent employees directly affected by the investigation, filed with the Regional Director a motion to intervene in the representation proceeding. This petition was denied by the Regional Director, with leave to renew the motion before the Trial Examiner at the hearing. Pursuant to the notice, the hearing on the consolidated petitions was held on June 3, 1938, before Howard Myers, the Trial Examiner duly designated by the Board. The Board, the Companies, and the U. E. R. W. were represented by counsel and the I. B. E. W. by union officials, all participating 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. At the hearing, the Association renewed its motion to intervene before the Trial Examiner, which motion was denied by the Trial Examiner on the ground that the Association had been found by the Board in a Decision on December 16, 1937,¹ to have been dominated and interfered with in its formation and administration by the Companies, within the meaning of Section 8 (2) of the Act, and the Companies had been ordered to disestablish the Association as the representative of any of their employees for the purpose of dealing with the Companies concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment. This ruling is hereby affirmed.

¹ 4 N L R B. 542

The Board has reviewed the various rulings of the Trial Examiner on motions and objections to the admission of evidence 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 COMPANIES

The Companies are New York corporations, with their principal offices and places of business at 1250 Atlantic Avenue, Brooklyn, New York. They form a unified and integrated enterprise for the manufacture and sale of electrical devices. The officers and directors of the Companies are identical; the capital stock of both corporations is held by substantially the same individuals, all being members of the same family; and all their policies, including their labor policies, are jointly determined and administered. The Companies own and operate a plant and machinery of a value from \$1,000,000 to \$1,500,000 and do an annual gross business of approximately \$1,700,000. Each of the Companies has a pay roll of its own, but in the event that one Company has more work than the other, employees are interchanged.

The Metropolitan Engineering Company is engaged in the manufacture and sale of pressed steel and welded products, 70 per cent of which are sold to purchasers in States other than the State of New York. Packard Motor Car Company, Detroit, Michigan, is its largest single customer. The principal raw material used by the Metropolitan Engineering Company is steel, approximately all of which is purchased and transported from States other than the State of New York through channels of interstate commerce.

Metropolitan Device Corporation is engaged in the manufacture and sale of electrical devices, meter, service, and entrance switches, reactance coils, and seals. About 60 per cent of its sales are made to purchasers in States other than the State of New York. Some of its products are sold to manufacturers who use them as parts and to jobbers who resell them to electrical contractors and the retail trade. About 50 per cent of its products are sold to public utilities who use them as part of their equipment. The principal raw materials used by the Metropolitan Device Corporation are steel, porcelain, copper, and paper cartons. About 80 per cent of these materials are purchased in States other than the State of New York and are transported to the plant through channels of interstate commerce.

The Companies admit they are engaged in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

The International Brotherhood of Electrical Workers, Local Union No. 3, is a labor organization affiliated with the American Federation of Labor, admitting to membership all the production, maintenance, and shipping employees of the Companies, excluding salesmen, watchmen, supervisory, clerical, and office employees.

United Electrical, Radio and Machine Workers of America, Local No. 1224, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all the production, maintenance, and shipping employees of the Companies, excluding salesmen, watchmen, supervisory, clerical, and office employees.

The Metropolitan Employees Association is a labor organization limiting its membership to all employees of the Companies, exclusive of the superintendent, manager, and other officers.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing, both the I. B. E. W. and the U. E. R. W. claimed a majority of the employees of the Companies in the appropriate unit and it was agreed by the I. B. E. W., the U. E. R. W., and the Companies that the question should be determined by an election to be held by the Board.

We find that a question has arisen concerning representation of employees of the Companies.

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 Companies 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 I. B. E. W., the U. E. R. W., and the Companies agreed at the hearing that a unit appropriate for the purposes of collective bargaining should include all the production, maintenance, and shipping employees of the Companies employed at their plant located at 1250 Atlantic Avenue, Brooklyn, New York, but excluding salesmen, guards and watchmen, and office, clerical, and supervisory employees.

Timekeepers and time-study men were shown by the evidence to be included in the class of clerical employees and, accordingly, will be excluded from the appropriate unit.

Employees engaged in research work in the laboratory were shown not to be production workers and will also be excluded from the appropriate unit.

Joseph Hoffman, Dominick Farriella, Franz Newmar, Jack D'Angelo, Raymond Parretta, and George Frischman, who were found to be supervisory employees by the Board in its Decision of December 16, 1937,² will be excluded from the appropriate unit as supervisory employees.

We find that all production, maintenance, and shipping employees of the Companies, excluding salesmen, guards, watchmen, research workers, and clerical, office, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Companies 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

At the hearing, the parties agreed that the question concerning representation could best be resolved by an election and we will therefore order that an election be held. Three lists of employees, dated March 13, 1937, January 1, 1938, and June 4, 1938, were introduced into evidence. The respective lists contained the names of the employees who had been on the pay roll of the Companies for the week prior to the date of the list, and the number of employees on the lists were respectively 276, 174, and 155. It was shown at the hearing that the decrease in the number of employees was due to decline in the business of the Companies.

It was the position of the U. E. R. W. that the date for the determination of eligibility to vote should be March 13, 1937, since it had been in the week of that date that the Companies had locked out members of the U. E. R. W. as found by the Decision of the Board of December 16, 1937.² The I. B. E. W. contended that the date should be fixed as of January 1, 1938, so as to include employees who although laid off would be likely to return to work in the event of an increase in the business of the Companies. The Companies stated that they would be satisfied with a date for eligibility set in accordance with the usual practice of the Board, which they understood to be a date 2 or 3 weeks before the actual date of the election.

² 4 N. L. R. B. 542.

We feel that the date suggested by the U. E. R. W. is too remote to furnish a proper standard for determining eligibility to vote. Although a lock-out did occur in the week of March 13, 1937, the employees who were locked out returned to work soon thereafter, and there is no showing that the Companies discriminated against the members of the U. E. R. W. in the course of any subsequent discharges or lay-offs. We find the date of January 1, 1938, to be the proper date for the determination of eligibility since it will include those employees who have been laid off within a recent period and would therefore be likely to return to work in the event of an increase in the business of the Companies. Accordingly, those persons in the appropriate unit who were on the pay roll of the Companies during the week ending January 1, 1938, excluding those who have since quit or been discharged for cause, but including those only temporarily laid-off, will be eligible to vote in the election.

Since Metropolitan Employees Association has been found by the Board in a Decision of December 16, 1937,³ to have been dominated and interfered with in its formation and administration by the Companies; within the meaning of Section 8 (2) of the Act, and the Companies were ordered to disestablish the Association as the representative of any of their employees for the purpose of dealing with the Companies concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, its name will not appear on the ballot.

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 Metropolitan Engineering Co. and Metropolitan Device Corp., Brooklyn, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All production, maintenance, and shipping employees of the Companies, excluding salesmen, guards, watchmen, research workers, and clerical, office, and supervisory employees, constitute a unit appropriate for the purpose 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

³ See footnote 2.

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 collective bargaining with Metropolitan Engineering Co. and Metropolitan Device Corp., Brooklyn, New York, 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 Second 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, maintenance, and shipping employees, excluding salesmen, guards, watchmen, research workers, and clerical, office, and supervisory employees, whose names appear upon the Companies' pay roll for the week ending January 1, 1938, excepting those who have since quit or been discharged for cause, but including those only temporarily laid off, to determine whether they desire to be represented by International Brotherhood of Electrical Workers, Local Union No. 3, or Local No. 1224 of United Electrical, Radio and Machine Workers of America for the purposes of collective bargaining, or by neither.