

In the Matter of B. F. STURTEVANT COMPANY *and* UNITED ELECTRICAL
AND RADIO WORKERS LOCAL INDUSTRIAL UNION No. 248

Case No. R-811.—Decided August 6, 1938

Heating and Ventilating Equipment Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to recognize union as exclusive representative—*Unit Appropriate for Collective Bargaining:* plant-wide unit: centralized management, supervision, and control; history of collective bargaining relations with employer; controversy as to exclusion of certain classifications: pattern makers: excluded; organized as craft; inclusion not requested by union; price setters: excluded; conflict of interest; field employees: excluded; no community of interest with plant employees; set-up men and inspectors: included; not supervisory employees; part of production force; exclusion requested by union; formerly admitted to membership in union—*Election Ordered:* date of filing of petition taken as eligible date to allow inclusion in unit of employees temporarily laid off—*Petition dismissed:* no union representative received majority vote at Board election.

Mr. Albert J. Hoban, for the Board.

Mr. Grosvenor Calkins and *Mr. Allan Seserman*, both of Boston, Mass., for the Company.

Mr. Henry Wise, of Boston, Mass., for the Union.

Mr. David Y. Campbell, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 10, 1938, United Electrical and Radio Workers Local Industrial Union No. 248, herein called the Union, filed a petition with the Regional Director for the First Region (Boston, Massachusetts) alleging that a question affecting commerce had arisen concerning the representation of employees of B. F. Sturtevant Company, Boston, Massachusetts, 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 23, 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 May 5, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. On May 11, 1938, the Regional Director issued a notice of postponement of hearing, copies of which were duly served upon the Company and the Union. Pursuant to the notices, a hearing was held on May 19, 20, 21, 23, and 24, 1938, at Boston, Massachusetts, before Samuel Jaffee, 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.

Thereafter the Company filed a brief with the Board and, on June 28, 1938, the Company and the Union participated in oral argument before the Board, at Washington, D. C.

The Board has reviewed the rulings of the Trial Examiner 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

B. F. Sturtevant Company is a Massachusetts corporation, and has its principal office and its Hyde Park plant at Boston, Massachusetts. The Company manufactures and sells fans, blowers, heating and ventilating apparatus, and allied equipment in the air-moving field.

During 1937 the Company purchased 6,775 tons of raw and finished materials for use in its manufacturing operations, 90 per cent of which were shipped to it from points outside Massachusetts. During the same year its total sales of finished products amounted to \$6,000,000 in value, of which 91.75 per cent represented finished products sold and shipped to purchasers in other States and in foreign countries. The Company is one of the three largest manufacturers in the industry. It maintains sales offices in the principal cities throughout the United States. The Company admits the jurisdiction of the Board.

The Company employs approximately 900 persons at the Hyde Park plant.

II. THE ORGANIZATION INVOLVED

United Electrical and Radio Workers Local Industrial Union No. 248 is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all production and maintenance employees of the Company at the Hyde Park plant, except supervisory employees and office workers.

III. THE QUESTION CONCERNING REPRESENTATION

The Union was formed in July 1937 and received its charter in September. On or about October 21, 1937, the Union notified the Company that a majority of the employees in an appropriate unit had designated it as their representative and requested recognition as exclusive representative of the employees of the Company. The Company refused this request on the ground that no proof of the Union's designation by a majority of the employees had been presented. The Company, however, offered to recognize the Union as the representative of its members.

Subsequently the Company and the Union tentatively agreed to a comparison of membership cards and employment records by a third party to be designated, for the purpose of settling the issue as to majority representation. A series of further conferences was held to determine the details of the agreement, culminating in a meeting between representatives of the Union and the Company on or about January 15, 1938. On that date there remained to be determined only the classifications of employees to be excluded from the appropriate unit and the employment records to be used as a basis for comparison with the membership cards. The Union contended that the actual pay roll for the period ending October 16, 1937, was the proper basis for comparison. The Company desired that a list of all employees actually working, together with those eligible for reemployment according to its records, be used. While it appears that the question as to the classifications of employees to be excluded from the appropriate unit was substantially settled at the January 15 conference, it is clear that no agreement was reached with reference to the specific employees or the number of employees to be included in the appropriate unit. Subsequent conferences failed to resolve the question.

We find that a question has arisen concerning representation of employees of the Company at its Hyde Park plant.

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 contends that an appropriate unit consists of all production and maintenance employees at the Company's Hyde Park plant, excluding foremen, executives, supervisors, apprentices under contract, office workers, research department employees, pattern makers, price setters, set-up men, inspectors, and field employees.

The Company contends that a plant-wide unit is not appropriate, since the several departments are substantially independent and there is little interchange either of employees or of operations. It is not clear whether the Company urges departmental or craft units. The several departments are under the supervision and management of one plant superintendent. There is one personnel manager for all departments in the plant. The negotiations between the Company and the Union were conducted with reference to employees in the several departments as one unit. We think that these facts are demonstrative of the practicability of a plant-wide unit.¹

The Company further contended at the hearing that if a plant-wide unit is appropriate, it should include the 29 set-up men, 12 inspectors, 6 price setters, and 9 field employees employed on October 16, 1937. In its brief filed with the Board, the Company contends that the six pattern makers should also be included in such unit. Other exclusions specified by the Union are conceded by the Company to be proper. It is stipulated between the Union and the Company also that some 20 production clerks, such as timekeepers, stock chasers, and the like, are in reality production and maintenance employees.

The pattern makers have been organized on a craft basis by an affiliate of the American Federation of Labor. The Union does not desire their inclusion in a bargaining unit. They will, therefore, be excluded.

It is the function of the price setters to time production operations for the purpose of arriving at cost figures to be used in setting piece rates and sales prices. They are more accurately described as time or efficiency study men. Their interests conflict with those of the other production and maintenance employees. They will be excluded from the unit.

¹ *Matter of Fried, Ostermann Co. and Local 80, International Glove Workers of America, A. F. L.*, 7 N. L. R. B. 1075.

Field employees are principally engaged in installing new equipment for purchasers and in repairing products already in use. Approximately two-thirds of their time is spent in servicing the finished product only after it is sold. No specific territory is assigned, and when not so engaged in servicing customers' purchased equipment the field men return to the plant, where they may engage in production and maintenance work. They are usually employed from outside the regular working force at the plant and do not appear to be under the immediate supervision of a foreman. In addition to their wages, they receive an expense-account allowance. In the performance of their principal duties the field men act as service employees outside the plant rather than as part of the production and maintenance force at the plant. It does not appear that there is a community of interest between the field employees and the production and maintenance employees. Accordingly, the field employees will be excluded.²

The Union requests the exclusion of the set-up men and inspectors on the ground that their duties are supervisory in nature. The Union contends that they are not now admitted to membership for that reason. However, the Union has members among the set-up men and inspectors, who were admitted during the period prior to the Union's original request for recognition. The duties of set-up men consist of placing jigs and tools on machines in accordance with the blue-print specifications for the particular product to be manufactured, preparatory to actual production. They thus constitute a skilled group of employees, who are paid on an hourly basis like other production and maintenance employees. They are older men who have worked as machine operators. While their tenure is somewhat more secure than that of other employees by reason of their wider experience, and while they are responsible for the maintenance of the machines as set up, the duties which they perform are not supervisory in character.³ Moreover, some of the more experienced machine operators do their own set-up work, and some set-up men also do other production work.

Inspectors are paid on an hourly basis and receive less than the machine operators. Their work is to inspect parts and finished products for defective material or workmanship. While they may return products found to be defective, they exercise no supervision or control over the work.⁴ Any possible conflict in interest is greatly

² Cf. *Matter of U. S. Testing Co., Inc. and Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696.

³ For a similar question of exclusion from an appropriate unit, see, *Matter of Marlin-Rockwell Corporation and Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206.

⁴ Footnote 3, *supra*.

minimized since all employees are paid either a straight hourly rate or on piece work, in which case they receive a guaranteed hourly rate. Like the set-up men, the inspectors form an essential part of the production organization.⁵ Both classes will be included.

We find that all production and maintenance employees at the Hyde Park plant of the Company, including production clerks, set-up men, and inspectors, and excluding foremen, executives, supervisors, office workers, apprentices under contract, research-department employees, pattern makers, price setters, and field employees, constitute a unit appropriate for the purposes of collective bargaining, and 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.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the Union introduced its membership application cards in evidence. The Union contended that the pay roll for the period ending October 16, 1937, also in evidence, should be used for the purpose of comparison with its cards. During oral argument before the Board the Company withdrew its prior contention that the active list of employees be used, and agreed to the Union's position. The pay roll of October 16 shows that there are approximately 943 employees in the appropriate unit. The membership cards introduced by the Union show that a substantial number, but fail to show that a majority, of employees in the appropriate unit have designated the Union as their representative.

We find that the question which has arisen concerning representation can best be resolved by holding an election by secret ballot. The Company contends that in the event that an election is held, eligibility to vote in the election should be determined upon the basis of the pay roll for the last period preceding the date of the Direction. We think that the date of the filing of the petition is preferable since it will allow inclusion in the appropriate unit of employees laid off since that date who may reasonably expect to return to work. Accordingly, all employees employed in the appropriate unit during the last pay-roll period next preceding the date of the filing of the petition on March 10, 1938, shall be eligible to vote in the election.

⁵ Cf. *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No 1125*, 2 N L R. B. 772

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 B. F. Sturtevant Company, Hyde Park, Boston, Massachusetts, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All production and maintenance employees of the Company at its Hyde Park plant, including production clerks, set-up men, and inspectors, and excluding foremen, executives, supervisors, office workers, apprentices under contract, research-department employees, pattern makers, price setters, and field employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the 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 collective bargaining with B. F. Sturtevant Company, Boston, Massachusetts, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the First 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 and maintenance employees of B. F. Sturtevant Company at its Hype Park plant, employed during the last pay-roll period next preceding the date of the filing of the petition on March 10, 1938, including production clerks, set-up men, and inspectors, and excluding foremen, executives, supervisors, office workers; apprentices under contract, research-department employees, pattern makers, price setters, field employees, and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Electrical and Radio Workers Local Industrial Union No. 248 for the purposes of collective bargaining.

[SAME TITLE]

SUPPLEMENTAL DECISION

AND

ORDER

September 19, 1938

On August 6, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted within twenty (20) days from the date of the Direction among all production and maintenance employees of B. F. Sturtevant Company at its Hyde Park plant, employed during the last pay-roll period next preceding the date of the filing of the petition, including production clerks, set-up men, and inspectors, and excluding foremen, executives, supervisors, office workers, apprentices under contract, research-department employees, pattern makers, price setters, field employees, and those who have since quit or been discharged for cause, to determine whether or not such employees desired to be represented by United Electrical and Radio Workers Local Industrial Union No. 248 for the purposes of collective bargaining.

Pursuant to the Direction, an election by secret ballot was conducted on August 26, 1938, at Hyde Park, Boston, Massachusetts, under the direction and supervision of the Regional Director for the First Region (Boston, Massachusetts). On August 27, 1938, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the ballot. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot, the Regional Director reported as follows:

Total number eligible to vote.....	708
Total number of ballots cast.....	649
Total number of ballots cast for United Electrical and Radio Workers Local Industrial Union No. 248.....	198
Total number of ballots cast against United Electrical and Radio Workers Local Industrial Union No. 248.....	447
Total number of blank ballots.....	1
Total number of void ballots.....	3
Total number of challenged ballots.....	50

The results of the election show that no collective bargaining representative has been selected by a majority of the employees. The petition for investigation and certification of representatives of employees of B. F. Sturtevant Company, Hyde Park, Boston, Massachusetts, will therefore be dismissed.

ORDER

By virtue of Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of B. F. Sturtevant Company, Hyde Park, Boston, Massachusetts, filed by United Electrical and Radio Workers Local Industrial Union No. 248, be, and it hereby is, dismissed.

MR. EDWIN S. SMITH took no part in the consideration of the above Supplemental Decision and Order.

8 N. L. R. B., No. 102a.