

In the Matter of BARTLETT & SNOW COMPANY and THE BARTLETT & SNOW EMPLOYEES' ASSOCIATION, INC., and UNITED AUTOMOBILE WORKERS OF AMERICA

Cases Nos. R-301 and R-302.—Decided November 11, 1937

Machinery and Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representatives: rival organizations; shut down of plant caused by conflicting demands of rival organizations—Unit Appropriate for Collective Bargaining: production employees; employees on hourly rate basis; divergence of interests; occupational differences; wage differentials—Election Ordered—Certification of Representatives.

Mr. Peter Di Leone, for the Board.

Krueger, Gorman & Davis, by Mr. Harold H. Gorman, of Cleveland, O., for the Company.

Mr. Ralph W. Bell, of Cleveland, O., for the Association.

Mr. Bert Cochran, of Cleveland, O., for the U. A. W.

Mr. S. G. Lippman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 15, 1937 and June 29, 1937, respectively, Bartlett & Snow Employees' Association, Inc., herein called the Association, and United Automobile Workers of America, herein called the U. A. W., each 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 Bartlett & Snow Company, Cleveland, 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 July 6, 1937, 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; and the Board further ordered, pursuant to Article III, Section 10 (c) (2),

of said Rules and Regulations, that the two cases be consolidated for the purpose of hearing.

On September 8, 1937, the Regional Director issued a notice of hearing to be held at Cleveland, Ohio, on September 16, 1937. Copies were served upon the Company, the U. A. W., and the Association. Pursuant to the notice, a hearing was held in Cleveland, Ohio, on September 16, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board.

The Board, the Company, the Association, and the U. A. W. 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 to 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 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

Bartlett & Snow Company was incorporated under the laws of the State of Ohio on March 12, 1902. The Company is engaged in the business of designing and manufacturing machinery and equipment for the handling and processing of materials.

The principal office of the Company is in Cleveland, Ohio. It maintains sales offices in New York City, Chicago, Illinois, and Baltimore, Maryland.

The principal raw material used by the Company in the operation of its plant is structural steel, including plates. About 75 per cent of this material comes from outside the State of Ohio. Other raw materials used by the Company come from foundries principally located in Ohio. However, about one per cent of the rough castings, nuts, and bolts used by the Company, and five per cent of the steel drop forgings come from outside the State of Ohio.

The Company's principal sales result from engineering studies of the problems of prospective customers. Production begins with detailing, and with the making of lay-outs and blueprints by the engineering department. From this department drawings are sent to the fabricating departments, where the actual construction of the machinery as so designed takes place. The fabricating departments are designated as follows: structural lay-out, structural, machine shop, and assembly. The completed machine is sent finally to the shipping department, from which it is shipped to the customer. On

occasion, where the contract so requires, the machine is erected at the purchaser's place of business.

The percentage of its finished products that are shipped directly outside the State of Ohio has varied during the last 10 years from a low of 35 per cent to a high of about 85 per cent. Exclusive of supervisory and clerical help, the Company employs 140 employees; 32 of these are employed in the engineering department; the balance are employed in the fabricating shops.

II. THE ORGANIZATIONS INVOLVED

United Automobile Workers of America is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all employees of the Company excluding supervisory, clerical and engineering employees.

The Bartlett & Snow Employees' Association, Inc., is an incorporated labor organization unaffiliated with any outside labor organization. All employees of the Company are eligible to membership in the Association except supervisory employees having authority to hire, discharge, or discipline employees.

III. THE QUESTION CONCERNING REPRESENTATION

In May 1937, the U. A. W. commenced its drive for membership among employees of the Company. Subsequently a petition for the formation of the Association was circulated throughout the plant. About June 1, 1937, the Company received a request for recognition from the Association, together with a signed list of signatures of employees of the Company. On the basis of a comparison of the pay roll with the signed list of names, the Company posted notices giving the Association exclusive bargaining rights for all of its employees. On June 5, the Company received a communication from the U. A. W. requesting a meeting for the purpose of negotiating an agreement. On June 7, during the period of negotiations between the U. A. W. and the Company, the plant abruptly shut down. The Company stated that it was advisable to shut down because of the conflicting demands of two factions seeking bargaining rights and that it did not deem it advisable to operate its plant until such conflict was adjusted.

On June 9, 1937, U. A. W. established a picket line around the factory. On June 25, pursuant to an agreement entered into between the Company, U. A. W., and the Association, the Company granted a general wage increase and agreed to recognize and bargain collectively with the Union certified by the Board.

We find that a question has arisen concerning the representation of employees of Bartlett & Snow Company.

IV. EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question of representation, which has arisen 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

In its petition the Association alleges that all the hourly employees of the Company, including the engineers, constitute an appropriate unit for the purposes of collective bargaining. The U. A. W. alleges in its petition that all the hourly paid employees, excluding the engineering employees, constitute an appropriate unit for the purposes of collective bargaining. Both petitions exclude supervisory and clerical help. The Company maintains that the engineers are part of production and should be included in the unit. Thus the question to be determined is whether the engineering department shall be excluded or included in the bargaining unit.

The engineering department is an integral part of the Company's business. The Company in its testimony refers to the engineers as a part of the production departments. There is evidence, however, that during the shut-down the Company requested the U. A. W. to allow engineers access to the plant without being stopped by pickets. The management is alleged to have insisted, on this occasion, that the engineers were a distinct group apart from the production departments.

In general, the record indicates little community of interest between the shop and engineering employees. The point of view, background, training, and skill of the two groups are different. The engineers are technical employees and, as a whole, have a scale of wages substantially higher than that earned by the rest of the men. Their work day, lunch period, and other conditions of employment are distinct from that of the men in the shops. The men in the shops, on the other hand, are all manual workers and, as a whole, have similar wage scales, working conditions, and problems.

It appears that the rights and interests of the Company's employees can best be protected and furthered by considering the shop employees as a distinct group excluding the engineers for the purposes of collective bargaining.

In order to insure to the employees of the Company the full benefit of their right to self-organization and collective bargaining and otherwise to effectuate the policies of the Act, we find that all hourly paid employees, except those employed in the engineering department, or in a supervisory or clerical capacity, constitute a unit

appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI. CONDUCT OF THE ELECTION

We further find that an election by secret ballot is necessary to determine the proper representative for collective bargaining and thus resolve the question concerning representation. It was stipulated by the parties that all the employees listed on the pay roll list of June 5, 1937, should be eligible to vote. We shall follow this agreement in one direction.

CONCLUSIONS OF LAW

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 Bartlett & Snow Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The hourly paid employees of the Company, exclusive of those employed in the engineering department, or in a clerical or supervisory capacity, 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, 49 Stat. 449, 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 Bartlett & Snow Company, Cleveland, Ohio, 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 Eighth 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 the hourly paid employees of the Company, employed on June 5, 1937, excluding those employed in the engineering department, or in a clerical or supervisory capacity, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by United Automobile Workers of America or the Bartlett & Snow Employees' Association for the purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

December 7, 1937

On June 15, 1937, and June 29, 1937, respectively, Bartlett & Snow Employees' Association, Inc., herein called the Association, and United Automobile Workers of America, herein called the U. A. W., each 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 Bartlett & Snow Company, Cleveland, 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 July 6, 1937, 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; and the Board further ordered, pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, that the two cases be consolidated for the purpose of hearing.

On September 8, 1937, the Regional Director issued a notice of hearing to be held at Cleveland, Ohio, on September 16, 1937. Copies were served upon the Company, the U. A. W., and the Association. Pursuant to the notice, a hearing was held in Cleveland, Ohio, on September 16, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board.

The Board, the Company, the Association, and the U. A. W. were represented by counsel and participated in the hearing. Thereafter, on November 11, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held among all the hourly paid employees of the Company employed on June 5, 1937, excluding those employed in the engineering department or in a clerical or supervisory capacity, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by United Automobile Workers of America or the Bartlett & Snow Employees' Association, Inc., for the purposes of collective bargaining or by neither. Pursuant to the Direction, an election by secret ballot was conducted on November 24, 1937. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

Thereafter, 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 to the proceeding his Intermediate Report on the ballot. No 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 of employees eligible.....	98
Total number of ballots counted.....	93
Total number of votes for United Automobile Workers of America.....	35
Total number of votes for Bartlett & Snow Employees' Asso- ciation, Inc.....	57
Total number of blank ballots.....	0
Total number of void ballots.....	1
Total number of challenged votes.....	2

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 Bartlett & Snow Employees' Association, Inc. has been designated and selected by a majority of all the employees of the Bartlett & Snow Company who are paid by the hour, excluding those employed in the engineering department, or in a clerical or supervisory capacity, and those who have since quit or been discharged for cause, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act Bartlett & Snow Employees' Association, Inc. 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.