

IN THE MATTER OF WADSWORTH WATCH CASE COMPANY and METAL
POLISHERS, BUFFERS, PLATERS AND HELPERS INTERNATIONAL UNION

Case No. R-277.—Decided December 10, 1937

Watch Case Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize either of rival organizations as exclusive representative of unit desired by each until proper bargaining agency or agencies are certified by Board; controversy between rival organizations as to appropriate unit—*Units Appropriate for Collective Bargaining:* (1) craft; (2) industrial; employees in craft unit eligible for membership in industrial union; desire and choice of employees involved—*Representatives:* proof of choice: membership in unions—*Certification of Representatives:* in (1) craft union and (2) industrial unit upon proof of majority representation; failure of intervening (industrial) union to file a petition in accordance with the rules and regulations does not prevent certification of such union as representative of a unit not described in the petition filed, where intervenor endeavored to comply with rules and was placed in position of a petitioner by Trial Examiner.

.. *Mr. W. J. Perricelli*, for the Board.

Peck, Shaffer & Williams, by *Mr. Andrew J. Conroy, Jr.*, of Cincinnati, O., for the Company.

Mr. Ray Kelsay, of Cincinnati, O., for the Polishers.

Barbour & Bassman, by *Mr. Fred B. Bassman*, of Newport, Ky., for the Alliance.

Mr. A. Bruce Hunt, Jr., of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On July 26, 1937, Metal Polishers, Buffers, Platers and Helpers International Union, herein called the Polishers, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio), a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Wadsworth Watch Case Company, Dayton, Kentucky, 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 August 26, 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.

On August 31, 1937, the Regional Director issued a notice of hearing to be held at Covington, Kentucky, on September 7, 1937, copies of which were duly served upon the Company, the Polishers, and The Wadsworth Watch Case Workers Alliance, herein called the Alliance, a labor organization claiming to represent employees of the Company. Pursuant to said notice a hearing was held in Covington, Kentucky, on September 7 and 8, 1937, before Charles B. Bayly, the Trial Examiner duly designated by the Board. The Board, the Company, and the Alliance were represented by counsel and the Polishers by their agent, 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. 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

The Company, a Kentucky corporation, has its office and principal place of business in Dayton, Kentucky. It manufactures principally watch cases, such products constituting approximately 90 per cent of its production. Compacts, belt buckles, cigarette cases, tie clasps and collar pins are also manufactured.

A stipulation,¹ entered into by all the parties to the proceeding, states that the Company has sales offices in New York City, Chicago, Illinois, and San Francisco, California, with sales personnel at each of these offices; that it maintains a selling corporation, known as Henriett, Inc., chartered under the laws of Kentucky, and operating throughout the United States for the purpose of distributing compacts manufactured by the Company; that the Company employs six commissioned salesmen throughout the United States; that 95 per cent of the Company's customers are located outside the State of Kentucky and are wholesalers of the Company's products; that for the fiscal year ending December 31, 1936, the total volume of the Company's business was done outside the State of Kentucky; that the raw materials purchased by the Company for use in its business are,

¹ Board's Exhibit 10A to C, inclusive

principally, gold, brass, nickel, and silver which are purchased outside the State of Kentucky, f. o. b. point of shipment. The stipulation indicates the Company employs approximately 464 production and 43 clerical and supervisory employees.

II. THE ORGANIZATIONS INVOLVED

Metal Polishers, Buffers, Platers and Helpers International Union is a labor organization affiliated with the American Federation of Labor. Local No. 68 of the Polishers was organized in June 1937 and admits to membership the following types of employees connected with the polishing process in the Company's plant: Polishers, buffers, platers, holdermen, cleaners, inspectors, and their helpers.

The Wadsworth Watch Case Workers Alliance is a labor organization without affiliation. Its membership is composed exclusively of Company employees and it numbers among its members employees within every production department of the Company's plant. The Alliance admits to membership all employees of the Company except the following: "(1) An officer of the Company; (2) any person having the right to employ or discharge employees; (3) those holding purely supervisory positions; (4) those engaged in the Time Study Department; (5) those engaged in the Cost Department; (6) those engaged in clerical work in the general offices of the Company. This does not exclude those engaged in clerical work in production department of the Company."²

III. THE QUESTION CONCERNING REPRESENTATION

The petition under which this proceeding arose alleges that the unit appropriate for the purposes of collective bargaining is "metal polishing, buffing, plating, and processors thereto."

During June, July, and August 1937, the Polishers obtained 61 members in the plant out of 71 employees engaged in the polishing process and eligible to membership. During July, Ray Kelsay, the Polishers' representative called upon Frank B. Stegeman, vice-president and general manager of the Company to negotiate a contract with the Polishers as the exclusive representative of the employees eligible to membership therein. Stegeman refused to enter into any agreement with the Polishers and stated that the Company would not negotiate a contract or bargain with the Polishers or any other labor organization until the proper bargaining agency or agencies had been determined and certified by the Board. This position of the Company was reiterated at the hearing by Stegeman.

These proceedings were instituted by Kelsay on behalf of the Polishers after the refusal of the Company to bargain.

² Quoted from Article I, "Articles of Incorporation of The Wadsworth Watch Case Workers Alliance." Alliance Exhibit No. 2A.

Meanwhile, certain employees undertook the organization of the Alliance. Activity in behalf of the Alliance commenced in June 1937. On July 30, 1937, officers were elected and a bylaw committee selected. This committee recommended that an attorney be employed by the Alliance, and thereafter its formation took place with legal advice and guidance. Membership application cards were printed and circulated outside the plant among employees eligible for membership. Each card designates the Alliance as the signer's bargaining agent with the Company "in respect to wages, rates of pay, hours of employment and other conditions of employment." Three hundred and eighteen employees signed the cards.

Pursuant to the bylaws a bargaining committee, known as "Employees Representation Committee", was elected. This was composed of 23 individuals, one from each of 23 theoretical divisions of the plant. On August 28, 1937, the bargaining committee and the president of the Alliance met with Stegeman in an effort to gain recognition of the Alliance as the exclusive bargaining representative for the entire plant, aside from those persons ineligible to its membership. No demands, other than that the Company accord the Alliance such recognition, were made upon Stegeman. Recognition by the Company was denied for the same reason as that given in denying recognition to the Polishers.

On September 1, 1937, the officers of the Alliance, acting pursuant to a resolution of its members, directed a letter enclosing a copy of the resolution to the Regional Office for the Ninth Region requesting, in substance, that a proceeding in accordance with Section 9 (c) of the Act be instituted and requesting an election to determine the bargaining agency "for and on behalf of the employees of said Wadsworth Watch Case Company."³ Neither the letter nor the resolution was in conformity with Article III, Section 2, of National Labor Relations Board Rules and Regulations—Series 1, as amended, and the request was not acceded to. The hearing in the instant case was held on September 7 and 8, 1937, and the motion of the Alliance to intervene was granted. For reasons stated hereafter the Alliance is herein treated as having filed a petition in conformity with said Rules and Regulations.

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

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 set forth in Section I above, has a close, intimate, and substantial

³ Alliance Exhibit No. 3A to C, inclusive

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

Board's Exhibit No. 3, an analysis prepared by the Company of its pay roll for the week ending July 20, 1937, shows the number of persons employed within each department of the plant during an "average" week. On the basis of this analysis the various departments and the number of employees in each may be listed as follows:

<i>Department</i>	<i>Number of employees</i>
Crown (compacts)-----	4
Crown (watch cases)-----	20
Milling (watch cases)-----	36
Buckle and Band-----	6
Engraving-----	3
Compact (decometal)-----	21
Jobbing-----	9
Turning-----	16
Glass-----	6
Inspecting-----	11
Jointing-----	27
Finishing-----	12
Polishing (compacts)-----	12
Polishing (nickel cases)-----	11
Polishing (filled & gold watch cases)-----	30
Plating (compacts)-----	2
Plating (filled & gold watch cases)-----	7
Press-----	24
Spinning-----	4
Etching-----	5
Die-----	66
Millwright-----	13
Porters-----	10
Stock room-----	2
Gold cage-----	3
Factory Office-----	4
Inspecting #2-----	3
Engineering-----	4
Melting (rolling)-----	10
Melting (anneal & scratch brush)-----	12
Errand boys, telephone operator, laundry employees, watchmen and janitresses-----	21
Total-----	414

Few employees of the Company are unskilled. The types and degrees of skill required vary from department to department; but, particularly in those departments dealing with precious metals, the work is highly specialized and a high degree of skill is required. In

this type of work a slight want of care may result in great loss. It is in this classification of work that employees in the unit alleged to be appropriate by the Polishers are engaged.

As stated previously, the Polishers claim jurisdiction over certain types of employees whose work is related to the polishing process. There are within the die department certain polishers who are properly termed "die makers". Also there are holdermen and inspectors who are not connected with the polishing process and, accordingly, are not eligible for membership in the Polishers and do not come within the unit alleged by it to be appropriate. The following employees come within the unit alleged by the Polishers to be appropriate: (a) *buffers and polishers*: in the polishing department, 34; in the belt buckle department, 3; in the crown and pendant department, 1; in the jobbing department, 1; (b) *cleaners*: in the polishing department, 5; in the plating department, 1; in the jobbing department, 1; (c) *holdermen*: in the polishing department, 2; (d) *inspectors*: in the polishing department, 9; in the plating department, 1; in the belt buckle department, 1; in the jobbing department, 1; and (e) *platers*: in the plating department, 7; in the engineering department, 4; total, 71. Of this total five employees are members of the Alliance. Only one employee is a member of both the Polishers and the Alliance.

The Polishers contends that the types of employment within the plant are so varied and highly specialized that the plant unit is not the appropriate unit for the purposes of collective bargaining. The Alliance contends that the plant unit is the appropriate bargaining unit. It cannot be overlooked that a large majority of the employees eligible for membership in the Polishers have expressed their preference for a craft unit, rather than an industrial unit, and have endeavored to obtain recognition by the Company as such. Few employees therein prefer the industrial unit.

We find that the employees engaged in metal polishing, buffing, plating and the processes related thereto, as enumerated above, constitute a unit appropriate for the purposes of collective bargaining, herein called the first unit, and we find, further, that all the employees of the Company, exclusive of officers of the Company, persons having the right to employ or discharge employees, those holding purely supervisory positions, those engaged in the Time Study Department, those engaged in the Cost Department, those engaged in clerical work in the general offices of the Company (except those engaged in clerical work in production departments of the Company), and those included in the first unit, constitute a unit appropriate for the purposes of collective bargaining, herein called the second unit, and that said units 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

There are 71 employees in the first unit. The Polishers introduced in evidence the membership cards of 61 persons, each of whom was identified by its financial secretary-treasurer as a member of the Polishers and by Stegeman as an employee of the Company. Thirty-nine of the signatures were verified by various persons who witnessed the signing of these particular cards, and the remainder, 22, were verified by the above named officer of the Polishers. These cards were available for inspection and objections by the parties to this proceeding, but no objections were made.

Since the record does not disclose the names of the various employees in each department there is no direct evidence that these members of the Polishers are employed in the first unit. However, the analysis of the departments in the plant, heretofore described,⁴ gives the number of employees in those departments as 414. The Alliance has a total of 318 members, and, accordingly, there are 96 employees in said departments who are not members of the Alliance. In view of the fact that the Alliance has not more than five members who are in the first unit and, further, that only one member of the Polishers is also a member of the Alliance, it is manifest that the great majority of, if not all, members of the polishers must inevitably be in the first unit.

In this unit, as has been stated, there are no more than 71 employees. Thus the overwhelming majority of the employees in the first unit have designated the Polishers as their representative for the purposes of collective bargaining.

The Alliance, at the time of the hearing, had 311 members and seven applicants for membership. Each member and applicant signed the type of card which has already been described, thereby designating the Alliance as their representative for collective bargaining. The secretary of the Alliance identified these persons as members of the Alliance and as employees of the Company. An employee of the Company, whose position is that of cost accountant, testified that he had compared the signatures on the cards with the signatures of employees in the Company compensation book, and on the basis of such comparison found all members of the Alliance to be employees of the Company.

There are 343 employees in the second unit. Of this total at least 313⁵ are members of or applicants for membership in the Alliance. This number constitutes a majority of all the employees of the Company in the second unit.

Some effort was made during the course of the hearing to cast a doubt upon the free and independent status of the Alliance. Such

⁴ Board's Exhibit No. 3.

⁵ From the total of 318 members and applicants, five have been deducted as being in the first unit.

effort has a bearing on the issues in this proceeding only for the purpose of proving that the Alliance may not have been the real and unhindered preference of its members. It is sufficient at the present time to state that the evidence in the record does not establish that the members of the Alliance joined it through interference, coercion or restraint on the part of the employer.

In rendering our decision to certify the Alliance as the exclusive representative of the employees in the second unit, we are not unmindful that a petition in accordance with Article III, Sections 1 and 2, of National Labor Relations Board Rules and Regulations—Series 1, as amended, was not executed and filed by the Alliance. However, in view of the fact that the Alliance was informed at the hearing by the Trial Examiner that its intervention placed it in the same position as if it had filed a petition for certification of representatives, we shall treat the case on the latter basis.

We find that the Polishers has been designated and selected by a majority of the employees in the first unit as their representative for the purposes of collective bargaining. The Polishers is, therefore, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and we will so certify.

We find that the Alliance has been designated and selected by a majority of the employees in the second unit as their representative for the purposes of collective bargaining. The Alliance is, therefore, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and we will so certify.

On 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 Wadsworth Watch Case Company, Dayton, Kentucky, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The metal polishers, buffers, platers and the employees engaged in processes related thereto, employed by Wadsworth Watch Case Company, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. All of the employees of Wadsworth Watch Case Company, exclusive of officers of the Company, persons having the right to employ or discharge employees, those holding purely supervisory

positions, those engaged in the Time Study Department, those engaged in the Cost Department, those engaged in clerical work in the general offices of the Company (except those engaged in clerical work in production departments of the Company), and all employees engaged in metal polishing, buffing, plating and the processes related thereto, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) 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, 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 CERTIFIED that Local No. 68 of Metal Polishers, Buffers, Platers and Helpers International Union has been designated and selected by a majority of all the metal polishers, buffers, platers, and the employees engaged in processes related thereto, employed by Wadsworth Watch Case Company, Dayton, Kentucky, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Local No. 68 of Metal Polishers, Buffers, Platers and Helpers International Union 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.

IT IS HEREBY CERTIFIED that The Wadsworth Watch Case Workers Alliance has been designated and selected by a majority of all the employees of Wadsworth Watch Case Company, Dayton, Kentucky, exclusive of an officer of the Company, any person having the right to employ or discharge employees, those holding purely supervisory positions, those engaged in the Time Study Department, those engaged in the Cost Department, those engaged in clerical work in the general offices of the Company (except those engaged in clerical work in production departments of the Company), and all employees engaged in metal polishing, buffing, plating and the processes related thereto, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, The Wadsworth Watch Case Workers Alliance 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.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Certification of Representatives.