

In the Matter of CHARLES E. REED & Co. and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 8, AFFILIATED WITH THE A. F. OF L.

*Case No. 13-R-2135.—Decided January 5, 1944*

*Fyffe & Clarke*, by *Mr. John Harrington*, of Chicago, Ill., for the Company.

*Messrs. P. L. Siemiller* and *Russell R. Oddo*, of Chicago, Ill., for the Union.

*Mr. Robert E. Tillman*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, District 8, affiliated with the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Charles E. Reed & Co., herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George S. Freudenthal, Jr., Trial Examiner. Said hearing was held at Chicago, Illinois, on November 23, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Charles E. Reed & Co., an Illinois corporation, operates a machine shop in Chicago, Illinois. During the first 10 months of the year 1943 the value of the Company's products was in excess of \$100,000, of which approximately 35 percent was shipped to firms outside the

54 N. L. R. B., No. 40.

State of Illinois. During the same period the Company purchased raw materials having a value in excess of \$40,000 from warehouses within the State of Illinois. More than 50 percent of such raw materials was originally purchased outside the State of Illinois by the Company's suppliers. The Company admits that it is engaged in commerce within the meaning of the Act.

## II. THE ORGANIZATION INVOLVED

International Association of Machinists, District 8, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

By letter dated October 25, 1943, the Union notified the Company of its claim to represent a majority of the Company's employees and requested recognition as their exclusive bargaining representative. By letter dated October 28, 1943, the Company informed the Union that it would refuse to grant such recognition unless and until the Union should be certified by the Board.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Union petitions for a unit of all production and maintenance workers, excluding guards, office clerical employees, and supervisory employees with the power to hire, discharge, or otherwise affect the status of employees, or effectively recommend such action. The Company has no objections to this proposed unit. The Union contends that Thomas J. Murphy should be excluded from the unit as a supervisory employee and that Thomas McKiernan should be included as a production employee. The Company takes no position as to Murphy and agrees that McKiernan should be in the production and maintenance unit.

*Thomas J. Murphy* appears on the pay roll as the only employee under the classification "maintenance." His duties include the maintenance and repair of machines and heating equipment. He is not

<sup>1</sup> The Regional Director stated that the Union had submitted to him 28 application-for-membership cards, all bearing apparently genuine original signatures; and that 27 of the cards bore names of persons whose names appeared on the Company's November 12, 1943, pay roll, which listed 31 employees in the unit hereinafter found to be appropriate.

engaged in production except when, on occasion, he instructs new employees as to the operation of machines. Although not regularly in charge of a group of employees, Murphy has the power to hire and discharge, and when needed, acts in the capacity of foreman over the day or night shift. Other than Murphy, there are only two persons in the plant possessing supervisory powers, namely, the president and the plant superintendent. We find that Murphy is clearly a supervisory employee, and we shall exclude him from the unit as such.

*Thomas McKiernan* is one of three employees of the Company who are sworn into the auxiliary army police, the other two being Murphy, above, and a third employee who is a full-time guard. McKiernan is employed from 90 to 95 percent of his working time as a turret lathe operator, a production job. He is not uniformed but carries arms when acting in a guard capacity during the remainder of his working time. We find that McKiernan's major employment is in the capacity of a production employee and that, in such capacity, he has a sufficiently substantial interest in the selection of a collective bargaining representative for the production and maintenance employees, to warrant his inclusion in the unit hereinafter found to be appropriate. We do not regard the fact that he is employed as a militarized guard a very minor portion of the time as an adequate reason to deny him the right to representation in his capacity as a production and maintenance employee. We shall include him in the unit.

We find that all production and maintenance workers employed by the Company, including Thomas McKiernan, but excluding guards, office clerical employees, foremen, and other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of our Direction of Election herein, subject to the limitations and additions set forth therein.

#### 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 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Charles E. Reed & Co., Chicago, Illinois, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Association of Machinists, District 8, A. F. of L.,<sup>2</sup> for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.

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<sup>2</sup> The Union expressed a preference at the hearing that its name appear on the ballot as set forth in the Direction of Election.