

In the Matter of AMERICAN CAN COMPANY and UNITED STEELWORKERS  
OF AMERICA, LOCAL 3156

*Case No. 13-R-2169.—Decided March 16, 1944*

*Simpson, Thatcher & Bartlett, by Mr. Edward L. Coffey, of New York City, for the Company.*

*Mr. Albert A. Krzywonos, of Joliet, Ill., for the Union.*

*Mr. Glenn L. Moller, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, Local 3156,<sup>1</sup> herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Can Company, Rockdale, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert N. Denham, Trial Examiner. Said hearing was held at Joliet, Illinois, on January 18, 1944. 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

American Can Company, a New Jersey corporation, maintains and operates production plants in numerous States of the United States.

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<sup>1</sup>The petition was filed by Local 3082-B. At the hearing the Union advised that the Local number had been changed from Local 3082-B to Local 3156, and requested leave to amend the petition accordingly. Leave to make said amendment was granted by the Trial Examiner.

One of its plants, the only operation of the Company here involved, is located at Rockdale, Illinois, a suburb of Joliet, Illinois, where the Company manufactures paper containers, corrugated boxes, and fiber cans. During the year 1943, the Company purchased for use at its Rockdale plant raw materials consisting principally of paper and metal valued at approximately \$1,576,000, approximately 71 percent of which was shipped to the Rockdale plant from points outside the State of Illinois. During the same period the Company manufactured at its Rockdale plant finished products valued at approximately \$3,582,000, approximately 53 percent of which was shipped to points outside the State of Illinois.

The Company admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

Local 3156, United Steelworkers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On or about November 10, 1943, the Union requested recognition by the Company as the exclusive bargaining representative of the Company's office and salaried employees. The Company made no response to this request and thereafter the Union filed the petition in the instant proceeding. At the hearing the Company announced that it would not recognize the Union unless it is 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 appropriate.<sup>2</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 contends that all salaried employees and inspectors of the Company at its plant at Rockdale, Illinois, excluding supervisory employees, such as the superintendent, assistant superintendent, chief clerk, personnel supervisor, employment manager, and foremen who have the right to discharge or discipline, constitute an appropriate collective bargaining unit. The Company agrees that a unit of sal-

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<sup>2</sup> The Regional Director reported that the Union submitted 60 application for membership cards bearing the apparently genuine signatures of persons listed on the Company's pay roll of November 1943, which pay roll contained the names of 67 persons within the alleged appropriate unit.

aried employees is appropriate, but differs with the Union as to the inclusion in the unit of a number of employees whose duties the Company contends are either supervisory or confidential in character. The Company also contends that inspectors should be excluded from the appropriate unit for the reason that they are hourly paid and that they are supervisory employees. The employees in dispute fall into the several general categories hereinafter discussed.

The Union seeks to include the following employees in the unit while the Company would exclude them:

*Central Management:* The Company contends that the assistant to the superintendent in charge of production and planning, the assistant to the superintendent in charge of research and development, and the assistant chief clerk, all exercise a high degree of managerial discretion and all have authority to recommend disciplinary action and the discharge of employees working under their supervision. Since the record clearly establishes that they have such authority, they will be excluded from the appropriate collective bargaining unit.

*Supervisors and Chief Clerks:* The tin plate supervisor, spoilage supervisor, paper materials supervisor, production supervisor, safety supervisor, chief pay roll clerk, and chief cost clerk, are all supervisory employees who have definite authority to recommend the hire, discharge, and discipline of other employees. They will be excluded from the appropriate unit. The assistant personnel supervisor works directly with the personnel supervisor and is himself in sole charge of the second shift. In this work he supervises and directs the Company's job analysis plan and represents the Company in all labor relations matters during the second shift. He also has authority affectively to recommend the hire, discharge, and changes in the status of employees. Since the assistant personnel supervisor is both a supervisory and a confidential employee, he also will be excluded from the appropriate unit.

*Personnel Department Employees and Secretary-Stenographer to the Superintendent and Chief Clerk:* The stenographer in the personnel department takes dictation from the personnel supervisor acting as his personal secretary. In the regular course of her work, therefore, she obtains detailed information pertaining to the Company's labor relations policies and labor relations matters. She will be excluded from the bargaining unit.<sup>4</sup> The job analyst specializes

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<sup>3</sup> The parties stipulated that various clerks, stenographers, typists, timekeepers, comptometer operators, and a messenger in the manufacturing, auditing, and timekeeping departments should be included in the appropriate unit, and that certain confidential and supervisory employees, including *inter alia*, the superintendent and his assistants, the chief clerk, the master mechanic, foremen, and assistant foremen, should be excluded. We adopt the stipulation of the parties.

<sup>4</sup> *Matter of General Motors Corporation, Chevrolet Division*, 53 N. L. R. B. 1096; *Matter of Vultee Aircraft Corporation, (San Diego Division)*, 54 N. L. R. B. 103; *Matter of Oliver Farm Equipment Company*, 53 N. L. R. B. 1078.

in working on the Company's job analysis plan, applying it to job studies in the factory. He sets up and recommends the rates of pay for new operations. The Company must necessarily rely upon him in determining wage rates. We shall, therefore, exclude him from the unit.<sup>5</sup> The receptionist clerk assists the employment manager in interviewing female applicants for jobs, maintains the personnel service records in the employment manager's office, and introduces new female employees to their foremen. Virtually all of her work is related to labor relations, in which field she acts as a representative of management. We shall exclude her from the appropriate collective bargaining unit. The secretary-stenographer to the superintendent and chief clerk, acts as private secretary to these two officers, and takes from them dictation or correspondence relating to matters of personnel and labor relations.<sup>6</sup>

*Confidential Clerks in Auditing Department:* In this Department there are three cost clerks, a cost analyst, a cost comptometer operator, a budget clerk, and a cashier clerk, all of whom have duties which the Company contends are of such a confidential nature as to necessitate their exclusion from the unit. They handle information relating to general production costs undoubtedly confidential as to the public but, at most, indirectly related to labor relations. We shall include them in the appropriate bargaining unit.<sup>7</sup>

*Assistant Pay-Roll Clerks and Telephone-Typist:* The Company seeks to exclude the assistant pay-roll clerks because it appeared from the evidence, that on occasion, when there is no one in the personnel office, they have removed personnel folders from the files to obtain information about employees for the local Credit Bureau, or to deliver the folders to the plant superintendent. Their regular work, however, does not require them to be familiar with the personnel files, and the uncontradicted testimony indicates that these employees are not informed as to the confidential portions of these files. We shall include the assistant pay-roll clerks in the appropriate collective bargaining unit. The Company also seeks to exclude the telephone-typist from the unit. Its only reason for taking this position is that the telephone-typist, by virtue of operating the telephone switchboard, is in a position to eavesdrop on conversation relating to labor relations. The record reveals no basis for this fear on the part of the Company, and we find no reason to assume that such improper conduct has been or will be indulged in by the telephone-typist. We shall include her in the appropriate collective bargaining unit.<sup>8</sup>

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<sup>5</sup> *Matter of Westinghouse Electric & Manufacturing Company*, 54 N. L. R. B. 272; *Matter of Vultee Aircraft Corporation, etc.*, *supra*.

<sup>6</sup> See footnote 4, *supra*.

<sup>7</sup> *Matter of Babcock and Wilcox Company*, 52 N. L. R. B. 900.

<sup>8</sup> *Matter of Babcock and Wilcox Company*, *supra*.

*Assistant to Master Mechanic:* This employee is working at the present time in the shop, making sketches and drawings of dies. It is intended, as soon as he has broadened his knowledge and experience, that he will do designing work, in a professional capacity. He does not supervise the mechanics unless specifically so instructed. He has nothing to do with hiring, discharging, or in any other way disciplining employees. In view, however, of his prospective professional status and the temporary character of his job, we shall exclude the assistant to the master mechanic.

*Nurses:* There are two nurses in the Company's employ. They prepare and maintain personal health records and have access to the personnel files in the employment manager's office. They are essentially professional employees whose interests are dissimilar to those of the other employees. In addition, they sometimes assist the personnel manager in interviewing female applicants for jobs. We shall exclude them from the appropriate collective bargaining unit.

*Inspectors:* The Union would include the approximately 17 inspectors in the unit it seeks. The Company argues that inspectors perform supervisory functions and thus should be excluded from any bargaining unit or, alternatively, that they should be included in a unit with hourly paid production and maintenance workers.

The Company's products are under the scrutiny of inspectors during the manufacturing processes in order that faulty workmanship and machine operation may quickly be discovered. Inspectors notify the appropriate foreman when defective work is caused by an incompetent or careless employee. Although an employee may be subjected to discipline as a consequence of such reports, it is not the function of inspectors to recommend or impose penalties. We are of the opinion that the making of these reports is not an exercise of supervisory authority and, therefore, we do not agree with the Company's contention in this respect.<sup>5</sup>

Since 1937, Local 2049, United Steelworkers of America, has represented production and maintenance employees of the Company under contracts excluding, *inter alia*, salaried employees and inspectors. Counsel for Local 2049 represents the Union in this proceeding and agrees with the Company that inspectors were excluded from the coverage of these contracts solely because of their heretofore salaried status. Now, in conformance to the Company's practice in its other plants, they are hourly paid. Since the original objection to the inclusion of inspectors in a unit with production and maintenance employees has been removed, since they are employed in the production processes, and since their working conditions and associations appear to be the same as those of production and maintenance employees, we

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<sup>5</sup> *Matter of Gardner-Denver Co.*, 44 N. L. R. B. 1192.

agree with the alternative contention of the Company that inspectors should be included in a unit with hourly paid production and maintenance employees. Accordingly, we shall exclude inspectors from the unit of salaried employees sought in this proceeding.

We find that all salaried employees in the employ of American Can Company at its plant at Rockdale, Illinois, including cost clerks, cost analysts, cost comptometer operators, budget clerks, cashier clerks, assistant pay-roll clerks, and the telephone-typist, but excluding the superintendent, assistant superintendents, chief clerk, master mechanic, chief inspector, personnel supervisor, employment manager, foremen, assistant foremen, personnel department stenographer, job analyst, receptionist clerk, secretary-stenographer to the superintendent and chief clerk, nurses, inspectors, assistant to the master mechanic, the assistant to the superintendent in charge of production and planning, the assistant to the superintendent in charge of research and development, the assistant chief clerk, tin plate supervisor, spoilage supervisor, paper materials supervisor, production supervisor, assistant personnel supervisor, safety supervisor, chief pay-roll clerk, chief cost clerk, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of such 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 American Can Company, Rockdale, 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 United Steelworkers of America, Local 3156, affiliated with the Congress of the Industrial Organizations, for the purposes of collective bargaining.