In the Matter of RHEEM MANUFACTURING COMPANY *and* UNITED STEELWORKERS OF AMERICA, LOCAL 1798, C. I. O.

Case No. 20–R–1053.—Decided April 29, 1944

Mr. Herbert E. Hall, of San Francisco, Calif., for the Company.

Gladstein, Grossman, Sawyer and Edises, of Oakland, Calif., by *Mr. Bertram Edises*, for the C. I. O.

Mr. James F. Galliano, of Oakland, Calif., *Messrs. Carl H. Berner and Albert B. Nelson*, of Richmond, Calif., and *Mr. K. C. Apperson*, of Stockton, Calif., for the I. A. M.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, Local 1798, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Rheem Manufacturing Company at Richmond, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at San Francisco, California, on March 27 and 28, 1944. The Company, the C. I. O., and International Association of Machinists, Lodge 824, A. F. of L., herein called the I. A. M., appeared and participated.[1] All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board.[2] At the hearing the Trial Examiner rejected several offers made by the I. A. M. to prove that the C. I. O. instigated and carried out a planned raid on the Company's employees who were mem-

[1] During the course of the hearing it developed that Paper Converters Local 382, A. F. of L., might have an interest in the proceeding The Trial Examiner recessed the hearing, communicated with the Paper Converters, and explained the circumstances. From the record it appears that the Paper Converters disclaimed any interest in the proceeding.

[2] A waiver signed by the C. I O., introduced into evidence at the hearing, states that the C I. O waives the right to protest any election held as a result of this proceeding on the basis of the charge of unfair labor practices filed by it in Case No. 20–C–1245.

bers of the I. A. M. A rebuttal offer of proof made by the C. I. O. was also rejected by the Trial Examiner.[3] All rulings made by the Trial Examiner at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Rheem Manufacturing Company is a California corporation with its principal office at San Francisco, California. It has plants and offices in California, Illinois, Louisiana, Maryland, Texas, Oregon, Alabama, Pennsylvania, and Australia, and maintains offices in the District of Columbia and New York. The only plant involved in this proceeding is the one located at Richmond, California, hereinafter referred to as the Richmond Plant, where the Company manufactures depth charge casings, pressure tanks and grease pails, fabricates steel gasoline drums, and galvanizes items such as anchors and bunks.

During the year 1943, the Company purchased steel valued at $7,395,146.83 for use at its Richmond Plant, of which $7,035,147.83 worth was purchased and transported to its Richmond Plant from points outside the State of California. During the same period the Company sold and transported approximately $10,000,000 worth of its products. Of this amount, $1,065,000 worth was sold and transported from its Richmond Plant to points outside the State of California. Ninety-five percent of the Company's production is under contract with the Army and Navy for military use wherever it may be required.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, Local 1798, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Association of Machinists, Lodge 824, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On August 18, 1942, the Company and the I. A. M. executed a closed-shop collective bargaining contract covering production and mainte-

[3] We find, for reasons stated in *Matter of The Trailer Company of America, et al.*, 51 N. L. R. B. 1106, that the Trial Examiner's rulings with respect to the offers of proof were proper.

nance employees of the Richmond Plant. The contract contained the following clause, designated as Section 11:

> This Agreement shall be in full force and effect for one (1) year from date of signing and will remain in effect thereafter, from year to year unless either party signatory hereto should give notice to the other party in writing, of a desire to change or revise this Agreement. Such written notice shall be presented to the other party not less than thirty (30) days prior to the expiration of the date hereof. During the thirty (30) days' period, conference shall be held looking towards a revision of this Agreement. There shall be no cessation of work or lock-out during such conference.

On June 30, 1943, the Company wrote the I. A. M., referring to Section 11 of the contract, and stating that, "This communication is formal notice to you of our desire to revise the agreement before making it effective for the year beginning August 18, 1943. We shall be pleased to hear from you regarding your wishes as to time of conference on our proposed changes." The Company and the I. A. M. did not thereafter execute a new written agreement.

On March 6, 1944, the C. I. O., by telegram, informed the Company that it represented a majority of the employees of the Company's Richmond Plant and was that day filing with the Board a petition for investigation and certification of representatives. This notice was confirmed by letters from the C. I. O. to the Company, dated March 7 and 11, 1944, respectively. The Company did not reply to any of these communications.

The Company and the I. A. M., apparently arguing that the notice given by the former on June 30, 1943, did not have the effect of terminating the 1942 contract, also contend that prior to August 18, 1943, the contract's anniversary date, they mutually agreed to continue it in effect until the execution of a revised agreement.

The intent of the contracting parties as to the effective term of their 1942 bargaining agreement was unmistakably expressed in Section 11. Section 11 specified that the agreement was to remain in effect for 1 year, and thereafter from year to year, unless at least 30 days prior to any anniversary date "either party . . . should give notice to the other party in writing, of a desire to change or revise" it. On June 30, 1943, the Company gave the I. A. M. written notice of its desire to change or revise the contract, thus forestalling the operation of the automatic renewal clause and, in effect, terminating the contract as of its anniversary date. The alleged understanding of the parties to continue the 1942 contract in effect until a revised agreement could be executed, even if reduced to writing, would not

serve to bar the instant proceeding, since it would merely extend the 1942 contract for an indefinite period.[4] We consequently find that no bar exists to an immediate determination of representatives.

A statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees within the unit hereinafter found to be appropriate.[5]

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

We find, in accordance with the agreement of the parties, that all production and maintenance employees of the Company's Richmond Plant, including those in the fibre drum and M–13 casing departments, but excluding shipping and receiving employees, guards, janitors, clean-up employees, outside servicemen, office and clerical employees, superintendent, night superintendent, general foreman, foremen, assistant or line foremen, and all 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.[6]

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot.

The C. I. O. requests that a pay-roll date sometime prior to March 6, 1944, the date it filed the petition herein, be used to determine eligibility to vote in the election. The I. A. M. contends that the Board should follow its usual policy with respect to determining eligibility to vote, and the Company takes a neutral position. We find, under all the circumstances, that there is no persuasive reason to depart from our customary practice.

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[4] See *Matter of The Ferbert-Shorndorfer Company*, 55 N. L. R B. 1011; *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512 It is well established, moreover, that a mere oral agreement does not preclude a determination of representatives See *Matter of Ercor, Inc*, 46 N. L. R B. 1035.

[5] The Field Examiner reported that the C I. O submitted 203 membership cards bearing the names of persons whose names appear on the Company's pay roll of March 5, 1944, which lists the names of 326 persons in the alleged appropriate unit. He also reported that the I. A. M. relies upon its closed-shop contract with the Company to substantiate its claim of representation.

[6] This unit is substantially identical with the unit described in the I. A. M.'s contract, except that, in addition to the departments embraced by the contract, it includes the fibre drum department, which has been a part of the plant only since about January 1, 1944, and the M–13 casing department, also a new department, which will not be in full operation until about May 15, 1944.

Those eligible to vote in the election shall be all employees in the unit found appropriate in Section IV, *supra*, 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.[7]

As previously noted,[8] the C. I. O. has filed with the Board a charge, alleging, *inter alia*, that the Company has violated Section 8 (3) of the Act by discriminatorily discharging Charles E. Radisky, A. Rodrigues, and Charles Wells. We shall permit these three persons to vote in the election, but hereby direct the Regional Director to impound their ballots pending the outcome of the unfair labor practice charge.

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 Rheem Manufacturing Company at Richmond, California, 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 Twentieth 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 Charles E. Radisky, A. Rodrigues, and Charles Wells, under the limitations set forth in Section V, above, and further 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 any 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 they desire to be represented by United Steelworkers of America, Local 1798, C. I. O., or by Machinists, 824, A. F. of L., for the purposes of collective bargaining, or by neither.

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[7] At the hearing the C. I. O and the I. A. M. requested that their names appear on the ballot as hereinafter set forth in the Direction of Election.

[8] See footnote 2, *supra*.