In the Matter of AMERICAN CAN COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. OF L.

Case No. 3–R–780.—Decided May 18, 1944

Mr. Morgan J. Callahan, Jr., of New York City, for the Company.
Mr. Daniel J. Omer and *Mr. Stephen M. Estey*, for the Union.
Mr. William Strong, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Can Company, Geneva, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Geneva, New York, on April 17, 1944. The Company and the Union appeared and participated. All parties 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 operates a plant at Geneva, New York, where it is engaged in the manufacture of Army ordnance matériel. Between April 1, 1943 and April 1, 1944, the Company used raw materials valued in excess of $100,000, 75 percent of which was transported to Geneva from points outside the State of New York, and manufactured finished products valued in excess of $100,000, 75 percent of which was shipped to points outside the State of New York.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.[1]

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 seeks a unit composed of all production and maintenance employees of the Company, excluding office and clerical employees, uniformed plant guards, drafting and designing department employees, the powerhouse stationary engineer, foremen, assistant foremen, and all other supervisory employees. The Company agrees with the Union, except that it would limit the unit to all hourly paid production and maintenance employees, and would exclude watchmen. The Company now employs only hourly paid production and maintenance employees, and states that it has no present intention of changing the remuneration of any of these employees from an hourly to a salary basis. The Union asserts, and the Company concedes, that the Company could alter the constituency of an hourly paid unit by placing individuals in it on a salary basis.

No cogent reason appears for limiting the unit sought by the Union in the manner desired by the Company. The method of remuneration is but one of the factors considered in determining an appropriate unit; it is not necessarily the decisive factor. The Union desires to represent all employees engaged in production and maintenance work. Since the Union is the sole labor organization involved in this pro-

[1] The Field Examiner reported that the Union submitted 365 authorization cards, all of which bore apparently genuine original signatures, and that about 563 employees are in the appropriate unit.

ceeding, and no persuasive considerations are present compelling the exclusion from the unit of production and maintenance employees who in the future might be changed from an hourly to a salary basis, remaining, however, production or maintenance employees in non-supervisory classifications, we shall include all production and maintenance employees in the unit. There are no watchmen employed by the Company; it does, however, employ uniformed plant guards. We shall not make any findings as to nonexistent categories of employees.

We find that all production and maintenance employees of the Company at its Geneva, New York, plant, excluding office and clerical employees, uniformed plant guards, drafting and designing department employees, the powerhouse stationary engineer, foremen, assistant foremen and any 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 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, Geneva, New York, 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 Third 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

the 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, affiliated with the American Federation of Labor, for the purposes of collective bargaining.