

In the Matter of U. S. MACHINE TOOL MFG. CORP. and UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 14-R-908.—Decided May 27, 1944

Mr. Harold H. Wisheart and Dr. H. A. R. Zeholaut, of Clinton, Ind., for the Company.

Messrs. John Rusak and Harry F. Burns, of Indianapolis, Ind., for C. I. O.

Mr. W. C. Riley, of St. Louis, Mo., for the IAM.

Mr. Joseph Lepie, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of U. S. Machine Tool Mfg. Corp., Clinton, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry G. Carlson, Trial Examiner. Said hearing was held at Clinton, Indiana, on April 28, 1944. The Company, the C. I. O., and the International Association of Machinists, Lodge No. 292, herein called the IAM, 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. At the hearing the IAM moved to dismiss the petition on the ground that an existing contract between it and the Company barred the instant proceeding. For reasons set forth in Section III, *infra*, the motion is denied. 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:

56 N. L. R. B., No. 180

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

U. S. Machine Tool Mfg. Corp., a Delaware corporation, is engaged at Clinton, Indiana, in the business of manufacturing gears and tools. During the year 1943, the Company purchased raw materials (chiefly high speed steel) having a value of \$25,000, all of which were shipped to the Clinton plant from points outside the State of Indiana. During the same period the Company's finished products exceeded \$100,000 in value, of which more than 95 percent was shipped from the Clinton plant to points outside the State of Indiana.

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

## II. THE ORGANIZATIONS INVOLVED

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

International Association of Machinists; Lodge No. 292, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On February 14, 1944, the C. I. O. advised the Company that it represented a majority of the Company's employees and requested recognition as their exclusive bargaining representative. The Company refused this request on the ground that its employees were covered by a valid and existing contract with the IAM.

On July 22, 1942, the Company and the IAM entered into a collective bargaining contract which provided:

This agreement shall become effective and remain in full for a period of one year, and thereafter until changed in the following manner:

Should either party hereto desire to amend or revise this agreement thirty (30) days' advance written notice, containing the proposed changes, shall be given, and before the expiration of said notice a conference shall be arranged and held with the view of all parties negotiating to a conclusion.

No notice of a desire to amend or revise the agreement was given by either contracting party to the other between the date of the execution of the contract and the time of the hearing herein. Both the Company and the IAM contend that their agreement constitutes a bar to a current determination of representatives.

From the language of the contract it is clear that it is at present terminable at any time upon 30 days' notice by either party. Consequently, it cannot serve to bar the instant proceeding.<sup>1</sup> Even if it were construed to be in full force and effect until July 22, 1944, and for yearly periods thereafter in the absence of notice of a desire to change its terms given by either contracting party at least 30 days prior to any anniversary date, it would nevertheless fail to preclude a present determination of representatives since its next anniversary date is less than 2 months from the present time.<sup>2</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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

In accordance with the stipulation of the parties, we find that all production and maintenance employees of the Company at its Clinton, Indiana, plant, excluding office and clerical employees, plant-protection employees, time-study men, 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.

#### V. THE DETERMINATION OF REPRESENTATIVES

The C. I. O. requests that the Company's March 15, 1944, pay roll be used to determine eligibility to vote. There is no persuasive reason for departing from our customary practice and, accordingly, 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.

<sup>1</sup> *Matter of Phelps Dodge Refining Corporation*, 40 N. L. R. B. 1159.

<sup>2</sup> *Matter of Flintkote Company*, 55 N. L. R. B. 1442

<sup>3</sup> The Field Examiner reported that the C. I. O. submitted 28 membership cards bearing the names of persons listed on the Company's pay roll of March 15, 1944, which contained the names of 43 employees in the appropriate unit. In addition, the Trial Examiner announced at the hearing that the C. I. O. submitted 3 additional designations bearing apparently genuine original signatures of persons whose names appeared on the above-mentioned pay roll. The IAM apparently relies on its contract as evidence of its interest in this proceeding, and also submitted to the Trial Examiner 10 applications for membership cards of persons whose names appeared on the foregoing pay roll.

## 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 the U. S. Machine Tool Mfg. Corp., Clinton, Indiana, 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 Fourteenth 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 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, affiliated with the Congress of Industrial Organizations, or by International Association of Machinists, Lodge No. 292, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.