

In the Matter of RHEEM MANUFACTURING COMPANY and UNITED STEEL-
WORKERS OF AMERICA, CIO

In the Matter of RHEEM MANUFACTURING COMPANY and INTERNA-
TIONAL ASSOCIATION OF MACHINISTS, A. F. OF L.

*Cases Nos. 10-R-1171 and 10-R-1190 respectively.—Decided
July 13, 1944*

*Mr. William Swanson, of New York City, and Mr. C. H. Black, of
Birmingham, Ala., for the Company.*

*Messrs. R. E. Farr and R. M. Poarch, of Birmingham, Ala., for the
Steelworkers.*

*Messrs. J. C. McGlon and J. H. Howard, of Birmingham, Ala., for
the Machinists.*

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petitions separately and duly filed by United Steelworkers of America, C. I. O., herein called the Steelworkers, and International Association of Machinists, A. F. of L., herein called the Machinists, each alleging that a question affecting commerce had arisen concerning the representation of employees of Rheem Manufacturing Company, Birmingham, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Birmingham, Alabama, on May 27, 1944. The Company, the Steelworkers, and the Machinists 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

Rheem Manufacturing Company, a California corporation engaged in normal times in the fabrication of steel barrels, automatic water heaters, boilers, pneumatic tanks, and various gas appliances, is at present occupied exclusively with the manufacture of shells, shell casings, and aircraft parts for the United States Government. The Company operates a number of plants located in various parts of the United States, including a plant at Birmingham, Alabama, the only plant involved in this proceeding. During the past 12 months, the Company's purchases of raw materials for use at its Birmingham plant exceeded \$1,000,000 in value, of which more than 55 percent was obtained from points outside the State of Alabama. During the same period, the Company manufactured and shipped from its Birmingham plant to points outside the State of Alabama finished products valued in excess of \$3,000,000.

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

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

III. THE QUESTION CONCERNING REPRESENTATION

Both Steelworkers and the Machinists were parties to a previous representation proceeding affecting employees of the Company's Birmingham plant¹ which resulted in the Board's certification of the Steelworkers on November 30, 1943, as the collective bargaining agent of "all production and maintenance employees," excluding certain named categories of workers not here in question. Relying upon this certification, on March 20, 1944, the Steelworkers requested recognition of the Company as the representative of the employees in the aircraft division of the Birmingham plant. However, the Company, uncertain of the true scope of the unit in which the Steelworkers was certified, informed the Steelworkers that it preferred to have the Board determine that organization's right under the certification to represent the aircraft division employees. Thereafter, on April 7,

¹ 52 N. L. R. B. 1527.

1944, the Steelworkers filed its petition in Case No. 10-R-1171 which alleged as appropriate a unit of the employees in the aircraft division.

At the time of the hearing in the previous proceeding, the aircraft division of the Birmingham plant was not in operation, having been recently established. From the record in that case, it is clear that neither the Steelworkers nor the Machinists intended that a certification issued by the Board was to cover any workers in the aircraft division.² Thus, the ambit of that proceeding was limited by the labor organizations involved so that the employees of the aircraft division were not encompassed. Consequently, our certification was similarly confined, and it follows that the aircraft division employees are not embraced by its terms.

On April 4, 1944, the Machinists also requested recognition as the exclusive bargaining representative of the aircraft division employees, but the Company refused to grant recognition unless and until the Machinists was certified by the Board.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Machinists represents a substantial number of employees in the unit alleged by it to be appropriate.³

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 DETERMINATION OF REPRESENTATIVES

Despite the fact that its petition alleged that a unit restricted to the employees of the aircraft division is appropriate, the Steelworkers asserts that all production and maintenance employees in the entire Birmingham plant constitute a single appropriate unit. As noted above, the Steelworkers was certified by the Board on November 30,

² Pages 77 and 78 of the transcript in the prior proceeding contain the following:

Trial Examiner FREEMAN: Let the record show that the rights of the petitioning unions are in no way prejudiced by any certification, or that their rights should not be prejudiced by any certification that the Board might make with respect to the employees of Rheem Manufacturing Company Shell Plant Division, and that any future employees of the Aviation Department have been—Aviation Motor Division, is that what it will be termed.

The WITNESS (Mr. L. A. Reber, plant manager): Well, Aircraft, we would call it, Aircraft Division.

Trial Examiner FREEMAN: Of the Aircraft Division are not included in the present petitions, nor are they to be included in any certifications, is that correct, Mr. Howard (Steelworkers' Representative) and Mr. Poarch (Machinists' Representative).

Mr. HOWARD: That is correct.

Trial Examiner FREEMAN: Mr. Poarch?

Mr. POARCH: Right.

³ The Field Examiner's statement shows that the Machinists submitted 62 authorization cards bearing names of persons whose names appear on the Company's pay roll of April 9, 1944. It also shows that the Steelworkers submitted 37 authorization cards bearing names of persons whose names appear on the afore-mentioned pay roll. There are approximately 201 employees in the unit alleged by the Machinists as appropriate.

1943, as the representative of all production and maintenance employees of the Birmingham plant, excluding, among others, the aircraft division employees. The Company also contends that all its Birmingham plant production and maintenance employees comprise an appropriate unit. However, the Machinists seeks a unit composed of the production and maintenance employees in the aircraft division of that plant. Notwithstanding, all the parties agree that clerical employees, messengers, material release clerks, material service analyst, material control clerk, project control clerk, stockroom clerk, production planners, production control dispatcher, scheduler, job dispatcher, tool planner, time-study man, liaison engineer, janitors, guards, maids, nurses, foremen, and all supervisory employees, should be excluded.

For a period preceding March 1, 1944, the Company was engaged exclusively at its Birmingham plant in the manufacture of shells for the United States Army. Subsequent to March 1, 1944, the Company commenced the manufacture of aircraft parts under contract with the United States Government and activated its recently created aircraft division. Both operations are now conducted in the same building under the general supervision of the plant manager. There is one personnel office, one timekeeper's office, one laboratory, one receiving and shipping room, one machine shop, and one loading platform, among other common facilities, for both the aircraft and shell manufacturing divisions.

However, the aircraft division is under the direct supervision of its own superintendent and, in general, operates independently of the shell manufacturing division. Furthermore, the aircraft division is separated by a partition from the shell manufacturing division. Although a small percentage of the aircraft division's present personnel was obtained from the shell manufacturing division, the greater percentage of its complement of employees was acquired from outside sources. At present, there is an inappreciable amount of interchange of employees between the divisions. It appears, moreover, that job-classifications and duties of aircraft division employees are, in the main, different from those of employees engaged in the shell manufacturing division.

Since the Steelworkers has been recently certified by the Board as the representative of the shell manufacturing division employees and inasmuch as it appears from the foregoing that the employees of the aircraft division form a well-defined, homogeneous group which can function as a separate unit, or be merged with the shell manufacturing division employees, we shall make no final determination at this time of the appropriate unit. Such determination will depend, in part, upon the desires of the aircraft division employees as evidenced by the results of an election to be conducted among them.

We shall direct an election among all production and maintenance employees of the aircraft division of the Company's Birmingham plant, excluding clerical employees, messengers, material release clerks, material service analyst, material control clerk, project control clerk, stockroom clerk, production planners, production control dispatcher, scheduler, job dispatcher, tool planner, time-study man, liaison engineer, janitors, guards, maids, nurses, 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, 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. In the event these employees select the Steelworkers, they will have thereby indicated their desire to be merged with the employees now represented by that organization. On the other hand, if they select the Machinists, they will have thereby indicated their desire to be bargained for as a unit separate from that in which the Steelworkers was certified.

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, Birmingham, Alabama, 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 Tenth 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 all production and maintenance employees of the aircraft division of the Company's Birmingham plant, excluding clerical employees, messengers, material release clerks, material service analyst, material control clerk, project control clerk, stockroom clerk, production planners, production control dispatcher, scheduler, job dispatcher, tool planner, time-study man, liaison engineer, janitor, guards, maids, nurses, 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, 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 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, C. I. O., or by International Association of Machinists, A. F. of L., for the purposes of collective bargaining, or by neither.