

In the Matter of MILLER-SIMONS, INCORPORATED and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

*Case No. 13-R-2501.—Decided August 3, 1944*

*Fyffe & Clark*, by Mr. Albert J. Smith, of Chicago, Ill., for the Company.

*Meyers and Meyers*, by Mr. Ben Meyers, of Chicago, Ill., for the Union.

*Mr. Bernard Goldberg*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Miller-Simons, Incorporated, Cicero, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Russell Packard, Trial Examiner. Said hearing was held at Chicago, Illinois, on June 30, 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

Miller-Simons, Incorporated, is an Illinois corporation having its office and plant at Cicero, Illinois. Prior to 1942, the Company was  
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engaged in the manufacture of portable motor-driven paint sprayers which were sold to customers throughout the United States. In 1942, the Company discontinued the manufacture of its regular product and became a sub-contractor for Douglas Aircraft, Russell Electric Company and Fisher Body Division of General Motors Corporation. During the calendar year 1943, the Company manufactured products valued in excess of \$100,000, and during the first 6 months of 1944, the value of such manufactured products exceeded \$50,000. For the Douglas Aircraft contract, which was completed this spring, the Company purchased raw materials valued at approximately \$30,000, of which about 10 percent came from points outside the State of Illinois; the finished products were shipped to factories located outside the State. At the present time, the Company has completed all its contracts except the one with the Russell Electric Company, and the number of its employees has declined from 40 to 10. The Russell Electric Company which has its factory in Chicago, Illinois, furnishes the Company with all necessary raw materials for the finished product which is shipped to its Chicago plant. The parties stipulated that the products manufactured by the Company are delivered to war contractors and sub-contractors, and are transported by the latter in interstate commerce.

We find, contrary to its contention, that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant the Union requested recognition as the exclusive bargaining representative of its employees on the ground that the Union's representation claims are incorrect.

A statement of the Trial Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</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.

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<sup>1</sup>The Trial Examiner reported that the Union submitted 14 authorization cards; that the names of 9 persons appearing on the cards were listed on the Company's June 1944 pay roll, which contained the names of 10 persons in the appropriate unit; and that all the cards were dated in May 1944.

## IV. THE APPROPRIATE UNIT

We find, in substantial agreement with the parties, that all production and maintenance employees of the Company, excluding office clerical employees, 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

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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company has been employing 2 school boys as regular production workers since October 1943. During the school term, these students worked 15 hours per week; at the present time, during school vacation, they are working 48 hours each week. The Company seeks to exclude these employees from participation in the balloting. As in similar cases involving students working as regular part-time employees after school hours, we shall permit the boys in question to participate in the election.<sup>2</sup>

## 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Miller-Simons, Incorporated, Cicero, 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 payroll period immediately preceding the

<sup>2</sup> See *Matter of General Petroleum Corporation of California*, 56 N. L. R. B. 1366; *Matter of Ken-Rad Tube & Lamp Corporation*, 56 N. L. R. B. 1050.

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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.