

In the Matter of CONTINENTAL CAN COMPANY, INC., REYNOLDS
MOULDED PLASTICS DIVISION and UNITED STEELWORKERS OF AMERICA
(CIO)

Case No. 8-R-1645.—Decided October 30, 1944

Mr. S. C. Carnes, of Cambridge, Ohio, for the Company.

Mr. Philip M. Curran, of Pittsburgh, Pa., and *Mr. William W. Kesler*, of Wheeling, W. Va., for the USA.

Messrs. H. J. Paar and *Charles A. Coakwell*, of Cleveland, Ohio, for the A. F. of L.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America (CIO), herein called the USA, alleging that a question affecting commerce had arisen concerning the representation of employees of Continental Can Company, Inc., Reynolds Moulded Plastics Division, Cambridge, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Cambridge, Ohio, on October 4, 1944. The Company, the USA, and Federal Labor Union No. 22738, American Federation of Labor, herein called the A. F. of L., 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 commencement of the hearing the A. F. of L. filed a motion to dismiss the petition. The Trial Examiner reserved ruling. For reasons hereinafter set forth the motion is hereby 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Continental Can Company, Inc., is a New York corporation with offices in New York City. The Company owns several divisions in several States. This proceeding involves only the Reynolds Moulded Plastics Division in Cambridge, Ohio, purchased by the Company on May 14, 1944.¹ The principal products of this Division are plastic parts, fabricated to the customer's specification, mainly on a subcontract basis for prime contractors to the Army, Navy, and Air Corps. During 1944, the sales of this Division will be in excess of \$4,000,000, at least 80 percent of which will be shipped to points outside the State of Ohio. Materials purchased, primarily raw synthetic compounded resins and maintenance supplies, will constitute at least 40 percent of the value of the sales, at least 90 percent of which will be shipped to the Division from outside the State of Ohio.

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.

Federal Labor Union No. 22738, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 26, 1944, the USA informed the Company that it represented a majority of the Company's employees and requested a conference for the purpose of negotiating a collective bargaining agreement. On August 11, 1944, the Company replied that since the A. F. of L. had a collective bargaining contract with the Company, the Company would prefer that the USA resort to the Board.²

¹ Prior to that time it was the Reynolds Moulded Plastics Division of Reynolds Spring Company, Jackson, Michigan

² On September 9, 1944, the Company and the A. F. of L. executed an agreement whereby the contract entered into on September 10, 1943, between Reynolds Spring Company and the A. F. of L. was extended until the execution of a new agreement or the finding by the Board of a new collective bargaining unit. No issue was made of the contract as a bar, and the parties stipulated that a question concerning representation had arisen.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the USA represents a substantial number of employees in the unit hereinafter found 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

We find, in substantial accord with a stipulation of the parties, that all production and maintenance employees, including watchmen, but excluding powerhouse firemen, engineers and their apprentices, plant guards, office clericals, office maintenance, salaried employees, foremen, assistant foremen, supervisors in charge of any class of labor, 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.⁴

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Continental Can

³ The Field Examiner reported that the USA submitted 481 authorization cards; that the names of 480 persons appearing on the cards were listed on the Company's pay roll of September 13, 1944, which contained the names of 502 employees in the appropriate unit; and that the cards were dated as follows: 125 in July 1944; 32 in August 1944; 9 in September 1944; and 264 were undated. The A. F. of L. based its motion to dismiss, which we have heretofore denied, on the alleged ground that the cards submitted by the USA were obtained by officers of Local #22738 through coercion and duress. The record does not support this contention, nor is there any evidence of any fraud. We find this contention to be without merit. The A. F. of L. presented no evidence in support of representation among the employees, relying upon the contract as evidence of its interest. We shall, however, accord the A. F. of L. a place on the ballot.

⁴ This unit is the same as that covered by the contract of September 10, 1943.

Company, Inc., Reynolds Moulded Plastics Division, Cambridge, Ohio, 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 Eighth 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 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 they desire to be represented by United Steelworkers of America (CIO), or by Federal Labor Union No. 22738, American Federation of Labor, for the purposes of collective bargaining, or by neither.