

In the Matter of THE GENERAL FIREPROOFING COMPANY and UNITED  
STEEL WORKERS OF AMERICA (CIO)

*Case No. 8-R-1554.—Decided October 31, 1944*

*Harrington, Huxley & Smith, by Judge Charles F. Smith, and Messrs. Norman A. Emery and Harry S. Manchester, of Youngstown, Ohio, for the Company.*

*Messrs. James P. Griffin and James C. Quinn, of Youngstown, Ohio, for the Union.*

*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 Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The General Fireproofing Company, Youngstown, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William O. Murdock, Trial Examiner. Said hearing was held at Youngstown, Ohio, on September 6, 7, and 8, 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. During the hearing the Company made a motion to dismiss the petition on the ground that the Union's showing of representation is insubstantial. In view of our finding 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.

The Company has requested oral argument before the Board. The request is hereby denied.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I THE BUSINESS OF THE COMPANY

The General Fireproofing Company, an Ohio corporation, has its principal office and place of business in Youngstown, Ohio, where it is engaged in the manufacture, sale, and distribution of aircraft parts for the United States Government. During 1943, the Company purchased raw materials, principally aluminum, valued in excess of \$1,000,000, of which more than 90 percent was shipped to the Company from points outside the State of Ohio. During the same period, the Company sold finished products valued in excess of \$1,000,000, of which more than 90 percent was shipped to points 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 ORGANIZATION INVOLVED

United Steelworkers 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 recognition to the Union as the exclusive bargaining representative 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.<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.

<sup>1</sup> The Field Examiner reported that the Union submitted 2,059 authorization cards and petitions; that the names of 1,288 persons appearing on the cards were listed on the Company's pay roll of June 1944, which contained the names of 4,431 employees in the appropriate unit; and that the cards were dated in 1943, and January, February, March, April, May, June, and July 1944.

At the hearing and in its brief, counsel for the Company argued that the Field Examiner's statement had no probative value, and requested that the Field Examiner be called to the stand in order that the Company might cross-examine him on the statement, that the Union produce its membership cards and that a check be made by a handwriting expert of the signatures of the employees, and that the Company's pay roll and the Union's cards be forwarded to the Board as exhibits for a check by an "impartial" person. The Trial Examiner denied the requests. We have heretofore affirmed the rulings of the Trial Examiner and we find that the Company's contentions are without merit. See *Matter of Interlake Iron Corporation*, 38 N. L. R. B. 139; *Matter of Atlas Powder Company*, 43 N. L. R. B. 757.

## IV. THE APPROPRIATE UNIT

The parties are in general agreement that the unit should comprise all production and maintenance employees, excluding general office, general factory office, and employment office employees, cafeteria workers, plant-protection, and laboratory employees, foremen, assistant 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. The parties are in disagreement, however, with respect to leadmen and factory clerks. The Company desires the inclusion of these employees in the unit, whereas, the Union contends that leadmen should be excluded as supervisory employees, and that those factory clerks who act in a confidential capacity should be excluded.

There are at the present time approximately 400 leadmen employed by the Company. They are immediately under the foremen or the assistant foremen of a department, and are responsible for the production line work of small groups of employees. These groups range from 5 to 20 in number. The leadmen instruct new employees, assign jobs to the employees in their respective groups, and see that such work is carried out. Their rate of pay is approximately 10 cents per hour higher than that of the regular production employee. They work from 1 to 2 hours longer each day than does the regular employee, so that their hours overlap with those of the leadmen on the preceding and succeeding shift. This enables the leadmen to advise each other regarding the status and condition of work on particular jobs, special orders, and other production problems. They report misconduct of the employees to the foremen, and have the authority to recommend wage increases and discharge. In at least 1 department, the leadman takes the place of the foreman while he is absent, and in another department on the second shift, there is no foreman or assistant foreman on duty during that shift. We find that the leadmen are supervisory employees, and we shall exclude them from the unit.

There are 50 employees classified as factory clerks who are hourly paid and work in the factory proper under departmental supervision. It appears that included in this category are receiving clerks, stock clerks, timekeepers, stenographers, and ordinary clerical employees.<sup>2</sup> Some of these clerks work in the foremen's and division superintendent's offices; the others are located elsewhere in the department. Each of the 3 division superintendents has clerks, but not all of the foremen have clerks. We are of the opinion that the factory clerical employees have interests closely related to those of production and maintenance

<sup>2</sup> The clerks in the shipping department are considered part of the general factory office and we find, in substantial accord with an agreement of the parties, that those clerks are excluded from the unit.

employees since they are in daily contact with production and maintenance employees and work under the same supervision; we shall include them in the unit. However, some of the clerks working in the offices of the division superintendents and foremen act in a secretarial capacity and, as such, fall within our definition of a confidential employee; <sup>3</sup> we shall, therefore, exclude them from the unit. We shall also exclude the timekeepers from the unit in accordance with our usual practice.<sup>4</sup>

We find that all production and maintenance employees, including the factory clerks, but excluding shipping department clerks, timekeepers, secretaries to the foremen and division superintendents, general office, general factory office, and employment office employees, cafeteria workers, plant-protection, and laboratory employees, foremen, assistant foremen, leadmen, 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 Company contends that an election should not be ordered at this time, since 950, or a majority, of its peacetime complement of approximately 1,200 employees are in the armed services and would be denied the right to vote because of their apparent inability to appear in person at the polls. We find this contention to be without merit. As stated in a recent case,<sup>5</sup> our inability to poll all the employees on military leave will not necessarily operate to give permanent status to a bargaining representative chosen in their absence. Unlike selections made in political elections which are operative for a fixed term, the certification of an exclusive bargaining representative does not preclude a reexamination as to the desires of employees. When it is demonstrated that servicemen have returned to their employment in sufficient numbers so that they comprise a substantial percentage of the employees in an appropriate unit for which we have certified a collective bargaining representative, a new petition for the investigation and certification of a bargaining agent may be filed with the Board. In this manner employees in the armed forces who were unable to cast a vote will be afforded ample opportunity to affirm or change the bargaining agent selected in their absence.

<sup>3</sup> See *Matter of Houdaille-Hershey Corporation*, 43 N. L. R. B. 726; *Matter of General Cable Company*, 55 N. L. R. B. 1143; *Matter of Electric Auto Lite Company*, 57 N. L. R. B. 723

<sup>4</sup> See *Matter of Goodman Manufacturing Company*, 58 N. L. R. B. 531; *Matter of Aluminum Forgings, Inc.*, 53 N. L. R. B. 1054

<sup>5</sup> *Matter of Mine Safety Appliances Co., Callery Plant, Callery, Pa.*, 55 N. L. R. B. 1190.

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 The General Fireproofing Company, Youngstown, 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 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 or not they desire to be represented by United Steelworkers of America (CIO), for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.