

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

Case No. 10-R-1376.—Decided January 19, 1945

Messrs. A. L. Monteith and E. R. Merrill, of Birmingham, Ala., for the Company.

Messrs. J. C. McGlon and Jack H. Crunk, of Birmingham, Ala., for the I. A. M.

Messrs. Crampton Harris and W. J. Shewmake, of Birmingham, Ala., for the U. S. A.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, A. F. of L., herein called the I. A. M., 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 hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Birmingham, Alabama, on January 5, 1945. At the commencement of the hearing, the Trial Examiner granted a motion of United Steelworkers of America, C. I. O., herein called the U. S. A., to intervene. The Company, the I. A. M., and the U. S. A. appeared at and participated in the hearing and 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 course of the hearing the U. S. A. moved to dismiss the petition. The Trial Examiner reserved ruling thereon. 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 opportunity to file briefs with the Board.

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

60 N L R. B., No. 32.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Rheem Manufacturing Company is a California corporation operating plants throughout the United States. We are here concerned with its plant at Birmingham, Alabama, where it is engaged in the manufacture of shells and shell casings. During 1944 the Company purchased raw materials for use at its Birmingham plant valued in excess of \$5,000,000, over 55 percent of which was shipped to it from points outside the State of Alabama. During 1944 the Company shipped products from its Birmingham plant valued in excess of \$7,500,000, to points outside the State of Alabama.

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

II. THE ORGANIZATIONS INVOLVED

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

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

III. THE QUESTION CONCERNING REPRESENTATION

On November 28, 1944, the I. A. M. requested recognition of the Company as exclusive collective bargaining representative of the employees at the Birmingham plant. The Company refused this request on the ground that it was operating under a contract with the U. S. A.

On January 1, 1944, the Company and the U. S. A. entered into an exclusive collective bargaining contract which provided that the contract remain in effect until January 1, 1945, and from year to year thereafter unless notice of a desire to terminate is given by either party thereto not less than 30 days prior to any annual expiration date. As stated hereinabove, the I. A. M. made its claim to the Company on November 28, 1944. Inasmuch as the I. A. M. made its claim prior to December 1, 1944, the date upon which the contract would have automatically renewed itself, we find that the contract does not constitute a bar to a determination of representatives at this time.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the I. A. M. represents a substantial

number of employees in the unit hereinafter found to be appropriate.¹

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 accord with a stipulation of the parties, that all production and maintenance employees at the shell plant and shell casing division of the Company at Birmingham, Alabama, including forge shop employees, but excluding professional engineering, professional and clerical employees, maids, janitors, nurses, messengers, guards, employees in the aircraft division, foremen, and any 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 means of 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 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

¹The Field Examiner reported that the I. A. M. presented 472 membership application cards bearing the names of persons who appear on the Company's pay roll of December 17, 1944. There are approximately 1200 employees in the appropriate unit. The U. S. A. did not present any evidence of representation but relies upon its contract as evidence of its interest in the instant proceeding.

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 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 International Association of Machinists, A. F. of L., or by United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.