

In the Matter of REMINGTON RAND, INC., PROPELLER DIVISION and UNITED ASSOCIATION OF PLUMBERS AND STEAMFITTERS, LOCAL 112, A. F. OF L.

In the Matter of REMINGTON RAND, INC., PROPELLER DIVISION and LOCAL 325, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L.

*Cases Nos. 3-R-958 and 3-R-962, respectively.—Decided July 23, 1945*

*Mr. Russell G. Rogers, of Johnson City, N. Y., for the Company.*

*Mr. Fred Grupp, of Binghamton, N. Y., for the I. B. E. W.*

*Mr. Arthur M. Ernst, of Binghamton, N. Y., for the Plumbers.*

*Mr. Jack S. Zucker, of Johnson City, N. Y., for the U. E.*

*Mr. Stanley B. Korengold, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon petitions duly filed by United Association of Plumbers and Steamfitters, Local 112, A. F. of L., herein called the Plumbers, and Local 325, International Brotherhood of Electrical Workers, A. F. of L., herein called the I. B. E. W., each alleging that a question affecting commerce had arisen concerning the representation of employees of Remington Rand, Inc., Propeller Division, Johnson City, New York, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. Said hearing was held at Binghamton, New York, on May 3, 1945. The Company, the Plumbers, the I. B. E. W., and Local 327, United Electrical, Radio and Machine Workers of America, C. I. O., herein called the U. E., 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

Remington Rand, Inc., Propeller Division, is a Delaware corporation engaged in the manufacture of propellers at Johnson City, New York. From January 1, 1943, to March 31, 1945, the Company used raw materials valued in excess of \$40,000,000, 60 percent of which represents shipments to the Company from points outside the State of New York. During the same period the Company's finished products amounted to over \$90,000,000, 95 percent of which represents shipments made to points outside the State of New York.

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

#### II. THE ORGANIZATIONS INVOLVED

United Association of Plumbers and Steamfitters, Local 112, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Local 325, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Local 327, United Electrical, Radio and Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III THE QUESTIONS CONCERNING REPRESENTATION

On March 13, 1944, pursuant to a consent election, the U. E. was certified as the bargaining representative of the Company's production and maintenance employees, excluding carpenters. Shortly thereafter, the U. E. and the Company, pending the negotiation of a master contract, entered into several written agreements relating to grievances, seniority rights, and an incentive plan.<sup>1</sup> Due to a controversy on certain issues, necessitating their submission to the National War Labor Board on November 3, 1944, the master contract was not consummated. On March 17, 1945, the Plumbers filed a petition with the Board seeking certification in a unit of maintenance pipefitters. Similarly on March 22, 1945, the I. B. E. W. filed a petition

<sup>1</sup> The incentive plan pertained only to direct production workers, not to electricians or plumbers. However, the Company extended the incentive plan to the latter groups in a subsequent agreement executed a few days prior to the hearing.

with the Board seeking certification in a unit of electrical maintenance electricians. Thereafter, on April 28, 1945, the National War Labor Board issued an interim order settling the disputed matters and directing the execution of a contract. At the date of the hearing no contract had yet been signed. The Company has refused to recognize either the Plumbers or the I. B. E. W. as the bargaining representative for the employees in the units respectively sought until such time as either of the petitioners obtains certification by the Board.

The U. E., urging the application of the principle enunciated in the *Allis Chalmers* case,<sup>2</sup> contends that the pendency of the proceedings before the National War Labor Board constitutes a bar to a present determination of bargaining representatives. It appears, however, that both the Plumbers and the I. B. E. W. had sufficient membership among the Company's employees to entitle them to a consideration of their respective unit claims at the time of the consent election. Nevertheless, neither organization received notice of or participated in such election. In view of these facts, we are of the opinion that the principle of refusing to redetermine bargaining representatives because of pending proceedings before the National War Labor Board does not apply to the instant case.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the I. B. E. W. and the Plumbers each represents a substantial number of employees in the unit each alleges to be appropriate.<sup>3</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.

#### IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Plumbers seeks a unit of maintenance pipe fitters, excluding the superintendent, foreman, and all other supervisory employees. The I. B. E. W. seeks a unit of electrical maintenance electricians, excluding all supervisory employees. The Company takes no position in respect to either of the units sought by the petitioners. The U. E., however, argues that the proposed units are inappropriate in view of the consent election whereby a unit of production and maintenance employees, including pipe fitters and electricians, was established.

We do not, however, agree that because of the consent election the separate units sought by the Plumbers and the I. B. E. W. are inappropriate.

<sup>2</sup> *Matter of Allis Chalmers Manufacturing Company*, 50 N. L. R. B. 306

<sup>3</sup> Upon an examination of the Company's March 26, 1945, pay roll, the Field Examiner reported that out of the 16 employees in the unit petitioned for, the I. B. E. W. submitted 14 application-for-membership-cards. They were dated as follows: 7 were undated, 1 in June 1943, 1 in October 1943, 1 in December 1943; 1 in April 1944; 1 in August 1944; and 1 in September 1944.

The Plumbers submitted 14 application-for-membership cards out of 14 employees in the unit. They were dated as follows: 1 in April 1926, 1 in January 1939, 1 in October 1941, and 11 in March 1945. The U. E. relies upon its interim agreements with the Company as evidence of its interest in this proceeding.

As previously indicated, neither the Plumbers nor the I. B. E. W. participated in the consent election nor was either properly notified thereof, notwithstanding the fact that each was organized and had an interest in the Company's employees at the time of the election.<sup>4</sup> As for the period prior to the consent election, the record indicates that there had been no bargaining history on a plant-wide basis including pipe fitters and electricians. We are of the opinion, therefore, that the foregoing circumstances do not preclude a finding that the units here sought are appropriate

*The units proposed by the Plumbers and Electricians*

As noted above, the Plumbers seeks a unit of maintenance pipe fitters, excluding the superintendent, foreman, and all other supervisory employees. These employees are engaged in the installation and arrangement of new equipment. They use separate tools and machinery, and work independently of other maintenance men. They are under the direction of a foreman assigned solely to the pipe fitters. The I. B. E. W. seeks a unit of electrical maintenance electricians, excluding all supervisory employees. Such employees are specialized technicians engaged in the maintenance and repairing of existing equipment. They also construct, install, and remodel new equipment. They have a separate headquarters and work, like the pipe fitters, under a separate foreman, independently of other maintenance employees. In view of the fact that both the pipe fitters and maintenance electricians are skilled and functionally coherent groups of employees, frequently represented by craft organizations,<sup>5</sup> we are of the opinion that the employees in each group may, if they so desire, form a separate bargaining unit. It is also clear, however, that each might appropriately be included in the broader production and maintenance unit advocated by the U. E. Therefore, we shall make no present determination of the appropriateness of a unit of maintenance pipe fitters, or of a unit of electrical maintenance electricians, but shall reserve such findings pending the results of the elections hereinafter directed among such employees. Upon the results of such elections shall depend, in part, our determination of the appropriate unit or units. If the maintenance pipe fitters select the Plumbers as their bargaining representative, they shall constitute a separate appropriate unit; likewise, if the electricians select the I. B. E. W. as their bargaining representative, they shall constitute a separate appropriate unit. Otherwise both the pipe fitters and the electricians shall remain part of the production and maintenance unit presently represented by the U. E.

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employ-

<sup>4</sup> See *Matter of Kearney and Trecker Corporation*, 62 N. L. R. B. 1174.

<sup>5</sup> See *Matter of Remington Arms Company, Inc.*, 54 N. L. R. B. 338, *Matter of American Cyanamid & Chemical Corporation*, 62 N. L. R. B. 925.

ees in the following groups who were employed during the pay-roll period immediately preceding the date of our Direction of Elections, subject to the limitations and additions set forth therein.

1. All maintenance pipe fitters, excluding the superintendent, foreman, 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, to determine whether or not they desire to be represented by United Association of Plumbers and Steamfitters, Local 112, A. F. of L.

2. All electrical maintenance electricians, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by Local 325, International Brotherhood of Electrical Workers, A. F. of L.

Upon the results of the elections in the aforesaid groups will depend, in part, our determination of the appropriate unit or units.

### DIRECTION OF ELECTIONS

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 Remington Rand, Inc., Propeller Division, Johnson City, New York, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Third 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 following employees who were employed by the Company during the pay-roll period immediately preceding the date of this Direction of Elections, 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:

1. All maintenance pipe fitters, excluding the superintendent, foreman, 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, to determine whether or not they

desire to be represented by United Association of Plumbers and Steamfitters, Local 112, A. F. of L., for the purposes of collective bargaining.

2. All electrical maintenance electricians, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by Local 325, International Brotherhood of Electrical Workers, A. F. of L., for the purposes of collective bargaining.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Elections.