

In the Matter of AIRCOOLED MOTOR CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U. A. W.-C. I. O.)

*Case No. 3-R-1046.—Decided September 20, 1945*

*Messrs. Melvin & Melvin, by Mr. James R. Skahen, of Syracuse, N. Y., for the Company.*

*Messrs. George Rigney and Gene Drumm, both of Syracuse, N. Y., for the Union.*

*Mr. David V. Easton, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (U. A. W.-C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Aircooled Motor Corporation, Syracuse, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene Von Wellsheim, Trial Examiner. Said hearing was held at Syracuse, New York, on July 25 and 26, 1945. 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 Company moved on several occasions at the hearing for a dismissal of the instant proceeding. For reasons stated below,<sup>1</sup> and set forth in Sections II, III, and IV, the motions are 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.

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<sup>1</sup> The Company asserted, *inter alia*, in support of its motions, that on the second day of the hearing, a report indicating that the Union represented a majority of the Company's employees appeared in the local newspaper and that this report is prejudicial to the conduct of a proper election. We find no merit in this assertion.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Aircooled Motor Corporation, a New York corporation, operates a plant at Liverpool, New York, with which we are solely concerned herein, where it is engaged in the manufacture of aircraft engines and ordnance fuses. During the year preceding July 1, 1945, the Company used at its Liverpool plant raw materials valued in excess of \$500,000, of which more than 75 percent was obtained from points outside the State of New York. During the same period, the Company manufactured finished products valued in excess of \$1,000,000, of which more than 90 percent represented shipments to points outside the State of New York.

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

### II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.<sup>2</sup>

### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representatives of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit it alleges to be appropriate.<sup>3</sup>

<sup>2</sup> The Company contended at the hearing that the Union is the International, and not a local thereof, and is, therefore, not qualified to represent employees of a designated employer. This contention is clearly without merit.

<sup>3</sup> The Field Examiner reported that the Union submitted 266 authorization cards and that there are approximately 750 employees in the unit sought by the Union.

In its brief, as well as at the hearing, the Company raised the issue of the sufficiency of the Union's interest among the employees in the unit, which it seeks and among the employees in the units which the Company would consider as appropriate. It requested (1) an inspection of the Union's designations; (2) a break-down of these designations into (a) the number signed by persons excluded by the parties, (b) the number signed by persons in disputed classifications, (c) the number signed by ordnance department workers, and (d) the number signed by engine department workers, and (3) a new statement setting forth this information. These requests are denied. The Company misconceives the purpose of the Field Examiner's statement with respect to the Union's showing of

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 UNITS

The Union seeks a unit comprised of all production and maintenance employees of the Company's Liverpool plant, including employees of the ordnance department, junior clerks, experimental assemblers, endurance testers, experimental machinists, tool crib employees, production tool room employees, firemen, and inspectors (grades A, B, and C), but excluding pattern workers, counsellors, time study men, engineers, draftsmen, chauffeurs, dynamo meter testers, nurses, cafeteria personnel, salesmen, production control employees (except stock movers and store attendants), shop clerks, stock clerks, timekeepers, plant-protection personnel, tool designers, pilots, airport mechanics, office employees, foremen, assistant foremen, leadmen, and all other supervisory employees within the Board's customary definition. In addition to disputing the inclusion of certain categories, hereinafter discussed, the Company contends that the ordnance department is composed of temporary employees who should not be included within the same unit as its other employees.

The Company, which is normally engaged in the production of aircraft engines, has, comparatively recently, added an ordnance department to its operations for the purpose of manufacturing fuses under a war contract which is expected to terminate in April 1946. The ordnance department is located in a separate wing of the Company's plant which is leased by the Company from the United States Government. The approximately 500 employees engaged in the ordnance operations<sup>4</sup> consist of a nucleus of older workers formerly employed in the Company's engine operations, and a large number of new employees hired solely for the purpose of producing fuses. The older workers are persons who would have been separated from the Company's employ had not the ordnance operations been undertaken, and it appears that the employment of almost all the employees presently engaged in the ordnance operations will be terminated upon the completion of the contract. The ordnance operations are repetitive in nature, and require, in general, less skill than the engine operations. There is little interchange of personnel between the two operations and,

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interest in representation proceedings. Such showing is an administrative matter, not subject to direct or collateral attack, and is used solely for the purpose of affording the Board reasonable assurance that a substantial number of employees desire representation. Cf *Matter of Amos Thompson Corporation*, 48 N. L. R. B. 423; *Matter of Seneca Falls Machine Company*, 58 N. L. R. B. 1413. We are of the opinion that the Union submitted evidence of substantial interest among the employees of the Company.

<sup>4</sup> There are about 250 employees in the Company's engine operations.

because of the nature of the products, little integration of work. These circumstances, we are convinced, outweigh factors indicating the feasibility of a single unit comprised of the employees of both operations,<sup>5</sup> and lead to the conclusion that the ordnance workers should be represented for collective bargaining purposes in a unit separate from the engine workers.<sup>6</sup>

As noted above, issues exist with respect to certain categories of employees whom the Union would include and the Company would exclude. We turn, therefore, to a consideration of these categories:

*Junior clerks:* The Company employs approximately 15 junior clerks, most of whom have their headquarters in the general office, and all of whom are salaried employees carried on the office pay roll. These employees run errands, carry mail, and perform related tasks. We are of the opinion that the duties, conditions of employment, and interests of these employees do not warrant their inclusion within a production and maintenance unit, and we shall therefore exclude them.

*Experimental assemblers, experimental machinists, and endurance testers:* The Company employs between 14 and 18 experimental assemblers and endurance testers, who, it asserts, are confidential employees. These employees assemble and test experimental motors under the direction of the Company's engineers. They are hourly paid workers who perform their duties in a room adjoining the assembly room in the plant. The experimental machinists, who the Company also contends are confidential employees, perform machine work from drawings of experimental engines. However, when not so occupied, they have performed regular production work, such as the machining of crank cases. The working conditions of all three categories of employees are similar to those of regular production workers. The mere fact that the major portion of their work is performed on experimental models rather than on general production work does not warrant a finding that they are confidential employees within the meaning of our usual definition. We shall include them.<sup>7</sup>

*Tool crib employees:* The Company maintains several tool cribs located in various departments of the plant. Each of them is attended by a person who keeps a perpetual inventory of stock and tools, and by other employees who receive and hand out these items. These employees are hourly paid and are responsible to the master mechanic, working under conditions of employment identical to those of the

<sup>5</sup> The record indicates that the Company has a single personnel office which hires employees for both operations. The maintenance employees of the Company service both operations. Several general foremen, as well as top management, exercise supervisory authority over both operations. Both groups of employees are hourly paid, receive the same overtime rates, have the same hours of work, are entitled to the same vacation privileges, and perform their duties under the same working rules.

<sup>6</sup> See *Matter of Bethlehem-Alameda Shipyard, Inc., et al.*, 53 N L R B 999, 1003-4.

<sup>7</sup> See *Matter of Republic Aviation Corporation*, 54 N L R B 539, 543-4. But cf. *Matter of Creamery Package Manufacturing Company*, 34 N L R B 108, 110.

regular production and maintenance workers. We shall include them.<sup>8</sup>

*Production tool room employees:* These employees make and repair tools, jigs, fixtures, and gauges. They are hourly paid workers, working under conditions of employment identical to those of the regular production and maintenance employees. We shall include them.

*Firemen:* These hourly employees operate the Company's boilers and have interests in common with production and maintenance employees. We shall include them.<sup>9</sup>

*Inspectors, grades A, B, and C:* The record indicates that these employees perform the duties usual to their classification. However, grades A and B inspectors have authority to make effective recommendations affecting the status of the employees whose work they inspect. Thus, as a result of recommendations made by these inspectors, employees have been shifted to other work, and their wages reduced. The grade C inspectors have no such authority. We shall exclude inspectors, grades A and B, since they possess supervisory authority within the meaning of our customary definition, but we shall include inspectors, grade C.

We find, therefore, that the following groups of employees of the Company's Liverpool plant constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All ordnance workers, including experimental assemblers, endurance testers, experimental machinists, tool crib employees, production tool room employees, firemen, and grade C inspectors, but excluding pattern makers, counsellors, time-study men, engineers, draftsmen, chauffeurs, dynamo meter testers, nurses, cafeteria personnel, salesmen, production control employees (except stock movers and store attendants), shop clerks, stock clerks, timekeepers, office employees, plant-protection personnel, tool designers, pilots, airport mechanics, inspectors (grades A and B), 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.

2. All remaining production and maintenance employees, including experimental assemblers, endurance testers, experimental machinists, tool crib employees, production tool room employees, firemen, and grade C inspectors, but excluding pattern makers, counsellors, time-study men, engineers, draftsmen, chauffeurs, dynamo meter testers, nurses, cafeteria personnel, salesmen, production control employees (except stock movers and store attendants), shop clerks, stock clerks,

<sup>8</sup> See *Matter of Ideal Roller & Manufacturing Company*, 60 N. L. R. B. 1105

<sup>9</sup> See *Matter of Palmer-Bee Company*, 60 N. L. R. B. 972.

timekeepers, office employees, plant-protection personnel, tool designers, pilots, airport mechanics, inspectors (grades A and B), 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.

#### V. THE DETERMINATION OF REPRESENTATIVES

The Company and the Union ask that the employees of the Company now in the armed forces of the Nation be permitted to vote. For reasons stated in *Matter of Mine Safety Appliance Co.*, 55 N. L. R. B. 1190, we shall allow those employees in the armed forces of the United States who appear in person at the polls to vote.

We shall direct that the question concerning representation which has arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

#### 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 Aircooled Motor Corporation, Syracuse, New York, two elections 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 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 employees in the units 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 elections, to determine whether or not they desire to be represented by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.