

In the Matter of NORTHROP CORPORATION and UNITED AUTOMOBILE  
WORKERS, LOCAL NO. 229

*Case No. R-185*

*Aircraft and Parts Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; prior election conducted by employer not decisive of issue of majority representation; contract with one of rival organizations recognizing it as representative of its members held no bar to petition for investigation and certification of representatives—*Unit Appropriate for Collective Bargaining:* production employees; occupational differences; organization of business; community of interest—*Election Ordered—Certification of Representatives.*

*Mr. Ralph Seward* for the Board.

*Mr. H. W. Elliott*, of Los Angeles, Cal., for Northrop Corporation.

*James Carter & John Packard*, by *Mr. Marshall Ross* and *Mr. Alexander Schullman*, of Los Angeles, Cal., for United Automobile Workers, Local No. 229.

*Mr. John J. Ford*, of Los Angeles, Cal., for Aircraft Workers Union, Inc., Local No. 1.

*Mr. Abraham L. Kaminstein*, of counsel to the Board.

DIRECTION OF ELECTION

*August 3, 1937*

The National Labor Relations Board, having found that a question affecting commerce has arisen concerning the representation of employees of Northrop Corporation, Inglewood, California, and that the employees of Northrop Corporation, exclusive of the general office and other office and clerical employees wherever located, those classified as executives, supervisors, and assistant supervisors, all employees in Departments 21 (factory superintendent's office), 27 (personnel and welfare), 32 (hill project), 14 (production control), 18 (engineering), 3 (stores), 13 (accounting, pay roll, timekeeping, and cost), 23 (purchasing), 31 (shipping), and all those in Department 25 (general maintenance) with the exception of mechanics, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, 49 Stat. 449, and acting pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of said Act, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

**DIRECTS** that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Northrop Corporation, an election by secret ballot shall be conducted within a period of twenty (20) days after the date of this Direction of Election, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations—Series 1, as amended, among the employees of Northrop Corporation, exclusive of the general office and other office and clerical employees wherever located, those classified as executives, supervisors, and assistant supervisors, all employees in Departments 21 (factory superintendent's office), 27 (personnel and welfare), 32 (hill project), 14 (production control), 18 (engineering), 3 (stores), 13 (accounting, pay roll, timekeeping, and cost), 23 (purchasing), 31 (shipping), and all those in Department 25 (general maintenance) with the exception of mechanics, on the pay roll of Northrop Corporation as of June 4, 1937, to determine whether they desire to be represented by United Automobile Workers, Local No. 229, or by Aircraft Workers Union, Local No. 1.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Direction of Election.

[SAME TITLE]

**DECISION  
AND  
CERTIFICATION OF REPRESENTATIVES**

*October 6, 1937*

**STATEMENT OF THE CASE**

On April 26, 1937, United Automobile Workers of America, Local No. 229, herein called the Union, filed with the Regional Director for the Twenty-First Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of the production employees of Northrop Corporation, El Segundo, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 14, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

Pursuant to notice and amended notice of hearing duly served upon the Company, upon the Union, upon a representative of Aircraft Workers' Union, Local No. 1, herein called the A. W. U., a labor organization named in the petition as claiming to represent some of the Company's employees, and upon the International Association of Machinists, another labor organization named in the petition as claiming to represent some of the Company's employees, a hearing was held in Los Angeles, California, on June 14, 15, 16, and 19, 1937, before Rollin McNitt, Trial Examiner duly designated by the Board. The Company, the Union, and the A. W. U., were represented by counsel and participated in the hearing, but the International Association of Machinists did not appear, and took no part in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties appearing. At the outset, counsel for the A. W. U. asked for a continuance of the hearing upon the grounds that it had filed charges with the Board under Sections 8 (1) and (2) of the Act, against the Company and the Union, some three hours prior to the time the hearing was scheduled to begin, and that it desired that the Board be notified of these new charges. It was agreed that the Board be notified immediately, and the Trial Examiner then denied the motion for continuance. Notice of the charges was immediately sent to the Board in Washington.

Objections to the introduction of evidence were made during the course of the hearing by counsel for the respective participating parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petition and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After examining the record in this matter, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the Company, and on the basis of such conclusions, and acting pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued a Direction of Election on August 3, 1937, in which it was found that the employees of the Company, exclusive of: the general office and other office and clerical employees wherever located; those classified as executives, supervisors, and assistant supervisors; all employees in Departments 21 (factory superintendent's office), 27 (personnel and welfare), 32 (hill project), 14 (production control), 18 (engineering), 3 (stores), 13 (accounting, pay roll, timekeeping, and cost), 23 (purchasing), 31 (shipping); and exclusive of all those in Department 25 (general maintenance), with the exception of mechanics, constitute a unit appropriate for the

purposes of collective bargaining. The Board also designated the Regional Director for the Twenty-First Region as its agent to conduct the election among the employees in the appropriate unit on the pay roll of the Company as of June 4, 1937. Merely for the purpose of expediting the election and thus to insure to the employees of the Company the full benefit of their right to collective bargaining as early as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law. Shortly thereafter, the Company and the A. W. U. petitioned the Federal District Court for a preliminary injunction to stay the holding of the election. On August 18, 1937, the Court issued its decree denying the application for preliminary injunction.<sup>1</sup>

Pursuant to the Board's Direction of Election, an election by secret ballot was conducted by the Regional Director on August 19, 1937, among the employees of the Company constituting the bargaining unit found appropriate by the Board. Thereafter, the Regional Director issued and duly served upon the parties to the proceeding the Intermediate Report upon the secret ballot. No exceptions to the Intermediate Report have been filed by any of the parties. The Board has received a petition of some of the employees ineligible to vote in the election, protesting their exclusion. The Board has fully considered this petition, and finds that a comparison of the names on this petition and those on the pay-roll list submitted by the Company indicates that the petition contains the names of employees in departments which both unions agreed to exclude, names not on the pay roll as of the date selected for purposes of election, and the names of a large number of clerical employees and engineers. The Board therefore denies the petition.

As to the results of the secret ballot, the Regional Director reported the following:

Total number eligible.....	897
Total ballots cast.....	696
Total number of blank ballots.....	2
Total number of void ballots.....	1
Total number of ballots cast for United Automobile Workers, Local No. 229.....	481
Total number of ballots cast for Aircraft Workers' Union, Local No. 1.....	138
Total number of challenged votes.....	74

<sup>1</sup>The opinion of Judge Leon R. Yankwich, of the District Court of the United States, Southern District of California, Central Division, is contained in Minute Orders No. 1235-M, and No. 1230-H. The opinion states in part: "The employer, Northrop Corporation, is not in a position to complain. Nor are the Aircraft Workers' Union, it not appearing that any of their members are being deprived of their right to participate. The holding of the election involves no threat or danger to the property or contractual rights of the plaintiff." -

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

### FINDINGS OF FACT

#### I. THE COMPANY AND ITS BUSINESS

The Company is a corporation organized and existing under the laws of the State of California, with principal offices in Santa Monica, California, and a manufacturing plant at El Segundo, California. Its mailing address, however, is Inglewood, California. The Company is a subsidiary of the Douglas Aircraft Company, Inc., the latter corporation owning and voting its entire stock. At the time of the hearing, the Company had five directors, one of whom had tendered his resignation. All the other four directors were also directors of the Douglas Aircraft Company, Inc. John K. Northrop, president of the Company, is also a director of Douglas Aircraft Company, Inc.

The Company is engaged in the business of manufacturing military and naval aircraft and aircraft parts. Its chief customers are the Air Corps of the United States Government and the Bureau of Aeronautics of the Navy Department. It also manufactures planes for the Bristol Airplane Company, the Swedish Air Board, and the Argentine Government.

In 1936, the Company had a volume of business of approximately two and a half millions, and produced 110 planes. Production plans call for the completion of 150 planes in 1937. The Company ranks about tenth, nationally, in the aircraft manufacture business. The number of employees at the plant fluctuates according to the needs of the production schedule, their number ranging from 1000 to 1400. The plant consists of five buildings, three of which are used in production, and the others for warehousing and storage. The Company also leases a hangar at the Los Angeles Municipal Airport, a quarter of a mile away, and its machines are finally assembled there.

The chief raw materials used by the Company are aluminum alloys, steel alloys, completely fabricated, and partially fabricated parts. All the duralumin and steel used by the Company come from outside the State of California. All aeronautical instruments and propellers, as well as the engines shipped by the prospective buyer to the Company's plant come from other States. A substantial percentage of paints, and more than 50 per cent of the rivets, bolts, nuts, wire, and other materials used in manufacture come from outside the State.

Thus more than 50 per cent, and if the customer-furnished materials are included, about 75 per cent of the total raw materials come from states other than California. A spur from the Atchison, Topeka, and Santa Fe Railroad adjoins the plant, and the cars are

shunted into the premises of the Company. The transfer of raw materials is then made by the employees of the Company.

Planes for the Army and Navy are delivered completely set up, serviced, and ready for flight at the Airport, the Company furnishing all the fuel, oil, and/or cooling fluid necessary for the flight to their destinations. The ferry pilot of the Army or Navy then pilots the plane to the points designated by these departments.

During their manufacture, the Army designates the stations to which planes are to go on completion. The planes now being prepared at the Company's plant, under existing contracts, have been routed to the following points: Dayton, Ohio; Rantoul, Illinois; Aberdeen, Maryland; Edgewood, Maryland; March Field, California; Hampton, Virginia; Shreveport, Louisiana; Mt. Clemens, Michigan; and the District of Columbia. A former contract with the Army had involved delivery of planes which were ferried to Dayton, Ohio; Rantoul, Illinois; Shreveport, Louisiana; March Field, California; Hampton, Virginia; Bolling Field, District of Columbia; Montgomery, Alabama; and spare parts were sent to Pennsylvania, Ohio, Texas, and California.

The Navy Department has assigned planes manufactured for it to squadrons attached to the U. S. S. *Saratoga*, and the U. S. S. *Lewington*, and to the Naval Air Stations at Anacostia, District of Columbia, and San Diego, California.

Where it is necessary to ship planes by rail, under the Army contract, the planes are delivered to the Government, f. o. b. cars, Inglewood, California, boxed or crated by the Company, with the Company filling out the bills of lading in accordance with the directions of the Government. Planes sent to England are delivered at the plant, routed by rail to New York, and then by boat to England. Other planes are destined for shipment to their respective countries. The Company is under contract to manufacture and deliver thirty planes to the Argentine Government.<sup>2</sup>

## II. THE ORGANIZATIONS INVOLVED

United Automobile Workers of America, Local No. 229, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all employees of the Company except supervisory officials and those having the authority to hire and discharge.

Aircraft Workers' Union, Local No. 1, is a labor organization which has been granted a charter by its parent body, Aircraft Workers' Union, Incorporated, Local No. 0, which is located at the

<sup>2</sup> Compare a similar description of the aircraft manufacturing industry in *Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No 1125*, Case No R-127, decided April 30, 1937 (2 N L R B. 772).

plant of the Douglas Aircraft Company. While the conditions for membership in this organization do not appear in the record, the contentions of the A. W. U. as to the appropriate bargaining unit would indicate that they are similar to those of the Union.

International Association of Machinists, another labor organization, although served with due notice, did not appear at the hearings, and took no part in the proceedings.

United Aircraft Welders of America, Local No. 257, is a labor organization, and has received a charter from the United Automobile Workers of America, thus also being affiliated with the Committee for Industrial Organization. It took no separate part in these proceedings, and did not appear at the hearing.

### III. QUESTION CONCERNING REPRESENTATION

In January 1937, members of the Union began an organization drive among the employees of the Company. Although the Union did not receive its charter until March, it had acquired a large membership by that time.

On February 25, 1937, the Board issued a complaint against the Company, alleging the discriminatory discharge of several workers because of their activities on behalf of the Union, which was then known as the Northrop Aircraft Local, United Automobile Workers of America, and further charging that the Company had dominated and interfered with the administration of the Northrop Employees Association.

Dissatisfaction of the employees with their working conditions led to a short sit-down strike which began on February 25, 1937, lasted for one and a half working days and a week end, and ended in a peaceful evacuation. Northrop, President of the Company, agreed to consider an agreement with the Union, and the Union withdrew the charges filed with the Board.

On March 10, 1937, the Company sponsored an election to determine which organizations its employees desired to represent them. At that time, no petition for investigation and certification of representatives had been filed with the Board, and the Board did not participate in any way in the holding of this election. The difficulties encountered when employers sponsor or conduct elections are illustrated here. The Union objected to the inclusion of the clerical and engineering employees, but there was no one who could authoritatively determine the extent of the appropriate bargaining unit, or the eligibility of voters, and all employees were allowed to cast ballots. Consequently, the Union refused to participate officially. Since the Company sponsored this election, it cannot be decisive of any of the issues.

The results of the balloting showed 689 votes for the Union, 338 votes for the Northrop Employees Association, and 48 votes for unions affiliated with the American Federation of Labor. This caused the early demise of the Northrop Employees Association. On April 10, or 12, 1937, the A. W. U. was organized at the plant of the Company. At the time of its organization, the A. W. U. called in the officers of the old Northrop Employees Association, "in order to see if there were any legalities to tie the new group in with the old, and to examine the financial status of the old Association." After this, they invited representatives of the parent unit at Douglas Aircraft Company to address them and to guide their first steps.

On March 15, 1937, as a result of the majority secured in this election, the Company signed an agreement with the Union, in which it recognized it as the chosen representative of its members for the purposes of collective bargaining.<sup>3</sup> On April 15, 1937, the Union asked the Company to recognize it as the sole bargaining agency for the employees at the plant, which the Company refused to do. At the hearing, the Company took the position that the agreement was a binding one, and that it prevented the Union from making any claim other than that of representing its own members. The Union argued that at the time of the signing of the contract, it had been unaware of the fact that it might demand sole bargaining rights, that it is not now precluded from making such claim, and that any clause which prevented it from so doing would be contradictory to the policy enunciated in the National Labor Relations Act, and therefore void.

The Act embodies a public policy of national concern and is the supreme law of the land on the subject matter covered by it.<sup>4</sup> Section 9 (a) of the Act provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit . . . ." As we have decided before, the Act and not the particular agreement furnishes the rule that must guide the Board in its determination.<sup>5</sup> The agreement in this case cannot foreclose the claim of the Union to be certified as the exclusive representative, which right must be decided solely by reference to Section 9 (a) of the Act. Nor

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<sup>3</sup> This agreement, made with the Union and with the United Aircraft Welders of America, Local No. 257, both groups being affiliated with the same parent body, was to run for a term of one year. It contains a provision allowing the Company to negotiate with other groups of employees, not members of the Union.

<sup>4</sup> *In the Matter of National Electric Products Corporation and United Electrical and Radio Workers of America, Local No. 609*, Cases Nos. C-219 and R-214, decided August 30, 1937 (*infra*, p 475)

<sup>5</sup> *In the Matter of R. C. A. Manufacturing Company, Inc. and United Electrical & Radio Workers of America*, Case No. R-39, decided November 7, 1936, (2 N. L. R. B. 159).

can the Union be said to be estopped by reason of any such agreement.<sup>6</sup> The agreement therefore has no effect upon the determination of the issues in this proceeding.

#### IV. THE APPROPRIATE UNIT

At the hearing, the pay-roll list submitted was the last one before the date of the hearing, being that of June 4, 1937. As of that date, there were 1,381 employees, located in the 29 different departments of the plant.

Northrop testified that the Company had no fixed classification of employees, but stated that about two-thirds of the plant employees were classed as "production employees." The other classifications made by the Company were clerical employees and engineers. The production employees are those directly engaged in the fabrication and manufacture of airplanes.

The main plant of the Company is a two story structure, with the first floor devoted to the shop employees. The second floor contains the great majority of clerical employees, and the engineering department. The building at the Municipal Airport houses employees engaged in woodworking, shipping, and inspection. The production employees rarely go upstairs in the main building, and while some of the engineers come downstairs to check on the plans, in the main, there is a separation of the production employees from the rest of the plant.

The Union contended at the hearing that the appropriate bargaining unit consisted of the production employees. The A. W. U. desired the inclusion of engineering and clerical employees as well, on the theory that they indirectly contributed to the production activities of the plant. Each union excludes from membership all supervisors and at least those assistant supervisors who have the right to hire and discharge. The Company suggested a unit including all employees except the supervisory officials.

At the hearing, both unions agreed to the inclusion and exclusion of certain departments, but differed as to others. Although both unions admit clerical workers to their membership, and in the case of some departments, are willing to stipulate for their inclusion, the difference in type of work performed, the small membership of these workers in both unions, the dissimilarity in interests between the production and clerical employees in an aircraft factory, prompts us to exclude them from the unit including production workers. On this basis, the Direction of Election excluded Departments 3 (stores), 13 (accounting, pay roll, timekeeping, and cost), 23 (purchasing), and 31 (shipping), since all of them are composed mainly of clerical employees.

<sup>6</sup> See the cases cited on this point in the opinion referred to in note 5.

Both unions were agreed upon the exclusion of Departments 21 (factory superintendent's office), 27 (personnel and welfare), and 32 (hill project). The hill project is an experimental research department.

The engineering department is concerned with designing and planning. A sizable number of employees in this department are draftsmen and clerical workers. The production control department issues and routes the shop orders, and determines how the parts shall be manufactured. Here too, one-half of the department consists of clerical employees. Many of the men employed in the non-clerical portions of these two departments are college graduates, and regard their positions as careers. The economic interests of these workers and their relation to the Company are on an entirely different plane from those of the production workers.

The employees in Department 25 (general maintenance), were excluded because their work relates to maintenance rather than production. However, the mechanics in this department were included, because they do frequently take part in production work. Both unions were willing to include the wood shop, and it would seem that the tool design department ought also be included. This latter department designs the tools which are actually used in production, and is closely related to production. Both unions were also willing to include the inspection department, and this was done.

For these reasons<sup>7</sup> we find that, in order to insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, the employees of the Company, exclusive of: the general office and other office and clerical employees wherever located; those classified as executives, supervisors, and assistant supervisors; all employees in Departments 21 (factory superintendent's office), 27 (personnel and welfare), 32 (hill project), 14 (production control), 18 (engineering), 3 (stores), 13 (accounting, pay roll, timekeeping, and cost), 23 (purchasing), 31 (shipping); and exclusive of all those in Department 25 (general maintenance), with the exception of mechanics, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the Union, having been designated by a majority of the employees in such unit as their representative for such purpose, is, by virtue of Section 9 (a) of the Act, the exclusive representative for the purposes of collective bargaining of all the

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<sup>7</sup> See also, *In the Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No 1125*, Case No R-127, decided April 30, 1937, (2 N. L. R. B. 772).

employees of the Company in the appropriate unit, and we will so certify it.

#### V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

President Northrop testified that the former sit-down strike completely shut down the plant, and hindered shipment of goods coming into the plant. So complete was this disruption, that normal production had not yet been reached at the time of the hearing. Since the strike, there has been increasing strife and tension. The fight between the rival unions as to the privilege of representing the employees of the Company has become more bitter. The president of the Union, Charles Hollinshead, testified that recent grievances have had little attention paid to them. He further stated that one of the aggravating causes of the entire situation was the fact that men in the A. W. U. were promoted, received more raises, better positions, and that, in short, there seemed to be a good deal of favoritism.

The refusal of the Company to recognize either union as the exclusive representative of the employees has led to a great deal of confusion, unrest, and to the discussion of further strikes. Undoubtedly, the flow of raw materials to, and the shipment of finished planes and parts from, the plant will continue to be hampered, and possibly even halted, as the result of these disagreements and arguments.

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of employees of Northrop Corporation, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The employees of Northrop Corporation, exclusive of: the general office and other office and clerical employees wherever located; those classified as executives, supervisors, and assistant supervisors;

all employees in Department 21 (factory superintendent's office), 27 (personnel and welfare), 32 (hill project), 14 (production control), 18 (engineering), 3 (stores), 13 (accounting, pay roll, time-keeping, and cost), 23 (purchasing), 31 (shipping); and exclusive of all those in Department 25 (general maintenance), with the exception of mechanics, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. United Automobile Workers of America, Local No. 229, having been designated by a majority of the employees of the Company in the aforesaid unit, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

### CERTIFICATION OF REPRESENTATIVES

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 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Automobile Workers of America, Local No. 229, has been designated by a majority of the employees of Northrop Corporation, exclusive of: the general office and other office and clerical employees wherever located; those classified as executives, supervisors, and assistant supervisors; all employees in Departments 21 (factory superintendent's office), 27 (personnel and welfare), 32 (hill project), 14 (production control), 18 (engineering), 3 (stores), 13 (accounting, pay roll, timekeeping, and cost), 23 (purchasing), 31 (shipping); and exclusive of all those in Department 25 (general maintenance), with the exception of mechanics, as their representative for the purposes of collective bargaining with Northrop Corporation, and its successors and assigns, and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, United Automobile Workers of America, Local No. 229, is the exclusive representative of all such employees for the purposes of collective bargaining with Northrop Corporation, and its successors and assigns, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

CHAIRMAN MADDEN took no part in the consideration of the above Decision and Certification of Representatives.