

In the Matter of LEONARD AND BAKER STOVE COMPANY and INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA (AFL) LOCAL NO. 39

*Case No. 1-R-1584.—Decided October 26, 1943*

*Mr. J. J. Brady*, of Taunton, Mass., and *Mr. George Grosser*, of Kalamazoo, Mich., for the Company.

*Mr. E. F. Kennedy*, of Taunton, Mass., and *Mr. James P. Powers*, of Everett, Mass., for the Molders.

*Mr. S. J. Zehala*, of Uniontown, Pa., and *Mr. J. A. Rusiecki*, of Taunton, Mass., for the Brotherhood.

*Mr. Jack Mantel*, of counsel to the Board.

DECISION •

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by International Molders and Foundry Workers Union of North America (AFL) Local No. 39, herein called the Molders, alleging that a question affecting commerce had arisen concerning the representation of employees of Leonard and Baker Stove Company, Taunton, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Greene, Trial Examiner. Said hearing was held at Taunton, Massachusetts, on October 4, 1943. At the commencement of the hearing, the Trial Examiner granted a motion of International Brotherhood of Foundry Employees, herein called the Brotherhood, to intervene. The Company, the Molders, and the Brotherhood 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

Leonard and Baker Stove Company is a Massachusetts corporation with its principal place of business in Taunton, Massachusetts, where it is engaged in the manufacture of iron stoves. During the first 6 months of 1943 the raw materials purchased by the Company were valued at approximately \$123,000, of which approximately \$22,000 worth was shipped to the Company from points outside the Commonwealth of Massachusetts. During the same period, the total sales of the Company amounted to approximately \$315,000, of which approximately \$172,000 worth was shipped to points outside the Commonwealth of Massachusetts.

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

### II. THE ORGANIZATIONS INVOLVED

International Molders and Foundry Workers Union of North America, Local No. 39, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Foundry Workers, unaffiliated, is a labor organization admitting to membership employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

On or about August 21, 1943, the Molders, in a letter to the Company, requested recognition for the purposes of collective bargaining. The Company replied that it considered the then existing contract with the Brotherhood as preventing it from acceding to the request of the Molders. Testimony at the hearing, however, shows that the above-mentioned contract expired on October 1, 1943, and that the Company had prior thereto notified the Brotherhood that it did not intend to renew the contract.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Molders represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

<sup>1</sup> The Regional Director reported that the Molders submitted 26 authorization cards, all of which bore apparently genuine signatures; that the names of 25 persons appearing on the cards were listed on the Company's pay roll of August 28, 1943, which contained the names of 62 employees in the appropriate unit; that 20 of the cards were dated from August 1943; 6 cards were undated.

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 Molders and the Brotherhood agree that the following is an appropriate unit: all employees of the Company, excluding executives, supervisors, and clerical employees, and further excluding molders, molders' apprentices, core makers and core makers' apprentices, and polishers.

The Company contends that the appropriate unit should consist of all employees of the Company, excluding executives, supervisors, and clerical employees, but including molders, core makers, and polishers.

The collective bargaining history of the Company, as manifested by a 6-year oral contract with the Brotherhood and for the last 2 years by written contracts, shows that all the employees, excluding the molders, core makers, and polishers, have constituted a separate appropriate unit. This group is known as the assembly line employees, as distinguished from the molders and core makers, who are known and referred to by the Company as foundry employees. For over 40 years, since the Company has been in existence, the Company has required that all of its molders and core makers be journeymen members of the Molders, although there has never been a written closed-shop contract with the Molders. Since July 1, 1943, the Company has been a member of the Manufacturers' Protective and Development Association, which in turn has a written agreement with the Molders covering molders, core makers, and other foundry employees.

The evidence shows that the operations of the foundry employees are more highly skilled than the work of the assembly line employees, and that there has always existed a clear functional division between the two groups. In view of the foregoing history of collective bargaining, we are of the opinion that the assembly line employees constitute an appropriate unit.

We find that all employees of the Company, excluding molders, molders' apprentices, core makers, core makers' apprentices, and polishers, and further excluding executives, clerical, and 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 an election by secret ballot among the em-

ployees 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 Regulation—Series 2, as amended, it is hereby

**DIRECTED** that; as part of the investigation to ascertain representatives for the purposes of collective bargaining with Leonard and Baker Stove Company, Taunton, Massachusetts, 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 First 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 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, to determine whether they desire to be represented by International Molders and Foundry Workers Union of North America, Local No. 39, affiliated with the American Federation of Labor, or by International Brotherhood of Foundry Employees, for the purposes of collective bargaining, or by neither.

**MR. GERARD D. REILLY** took no part in the consideration of the above Decision and Direction of Election.