

In the Matter of PLASTIMOLD, INC., and UNITED RUBBER WORKERS OF AMERICA (CIO)

Case No. 1-R-1587.—Decided October 27, 1943

Mr. John W. McIntyre, of Attleboro, Mass., for the Company.

Mr. Francis Quinn, of Cranston, R. I., and *Mr. Rex Murray*, of New Haven, Conn., for the CIO.

Mr. Edward A. Raleigh, of Boston, Mass., and *Mr. Hardy D. Wilson*, for the Molders.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition and amended petition duly filed by United Rubber Workers of America (CIO), herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Plastimold, Inc., Attleboro, 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 Attleboro, Massachusetts, on October 5, 1943. The Company, the CIO, and International Molders and Foundry Workers Union of North America, Local No. 320 (AFL), herein called the Molders, appeared, participated, and 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

Plastimold, Inc., is a Massachusetts corporation engaged at Attleboro, Massachusetts, in the manufacture of plastic products. Dur-
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ing the first 6 months of 1943, the Company purchased raw materials valued at approximately \$130,000 and sold approximately \$602,000 worth of finished products. Approximately \$105,000 worth of the raw materials purchased by the Company during this period was shipped to its Attleboro, Massachusetts, plants from points outside the Commonwealth of Massachusetts and about \$333,000 worth of finished products sold by the Company during the same period was transported to points outside the Commonwealth of Massachusetts. The Company does not deny that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

International Molders and Foundry Workers Union of North America, Local No. 320, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The parties stipulated that on or about August 26, 1943, the CIO requested the Company to recognize it as the exclusive bargaining representative of the employees within an alleged appropriate unit and that the Company refused to accord the CIO such recognition because of the alleged existence of a collective bargaining contract between the Company and the Molders.

The contract which the Molders contends is a bar to this proceeding was executed on March 31, 1942, and according to its terms was to remain in effect until March 31, 1943, and thereafter, until a new agreement was made. It is a closed-shop contract covering the employees of the Company's molding department. On April 22, 1943, by an endorsement on the back of the original agreement, the contracting parties extended its term for a period of 90 days. Thereafter on June 21, 1943, a second endorsement on the contract purported to extend its effective term to March 31, 1944. Each of these endorsements provided that the agreement should continue for the specified period unless sooner terminated by the negotiation of a new contract. On August 15, 1943, the Company and the Molders entered into negotiations for a new contract. As a result, a new agreement was reduced to writing, signed by the Company, and presented to the Molders for ratification. This new agreement has never been executed by the Molders. As previously noted, the CIO requested the Company to grant it recognition on or about August 26, 1943. Thereafter, on

August 31, 1943, the CIO filed the original petition in this proceeding and on September 16, 1943, the amended petition was filed. On September 28, 1943, after the petition and amended petition herein had been filed and the notice of hearing issued, the Molders and the Company entered into an amendment to the original contract, as extended, altering certain of its conditions. Evidence adduced at the hearing indicates that this amendment constituted the changes which had been made in the old contract by the negotiations of August 15, 1943.

The Molders argues that the contract of March 31, 1942, as extended and amended, constitutes a bar to a determination of representatives. We cannot agree with this contention. The original contract, by its terms, was an agreement of indefinite duration which has been in effect over 1 year and would not constitute a bar to an immediate determination of representatives.¹ Each of the extensions endorsed on the original contract contemplates the negotiation of a new agreement. Moreover, the proposed contract of August 15, 1943, and the amendment to the original contract of September 28, 1943, represent actual negotiation of new terms, as to which no formal agreement was executed until after the CIO had asserted its claim.² In view of the lack of finality in the effective term of the contract and the extensions thereto, we find it to be no bar to a present determination of representatives.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the CIO represents a substantial number of employees within the unit which it alleges to be appropriate.³

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 CIO contends that all production and maintenance employees of the Company, excluding executives, supervisors, and clerical employees, comprise an appropriate bargaining unit. The Molders takes the position that the unit set forth in its contract with the Company, comprised of all mechanics, molders, preformers, set-up men, expeditors, and janitors employed in the Company's molding department, excluding supervisors and clerical employees, comprise the appropriate unit.

¹ See *Matter of General Electric Company*, 48 N. L. R. B. 1044.

² See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

³ The Regional Director reported that the CIO submitted 98 application-for-membership cards bearing apparently genuine original signatures of persons whose names appear on the Company's pay roll of August 23, 1943, which contains 161 names of persons within the alleged appropriate unit; 61 of the 98 signatures are names of persons in the unit covered by the alleged contract between the Molders and the Company, which unit comprises 88 employees.

The Company's manufacturing operations are roughly divided into two departments, namely, the assembling department and the molding department. The employees covered by the Molders' contract work for the most part in a building some 20 feet removed from the building which houses the assembling department. The majority of the personnel in the assembling department are female employees while all of the molding department employees are male. There is very little interchange of employees between the molding department and the assembling department. However, the manufacturing operations of the Company are closely integrated and the work performed in the assembling department is the further processing of products fabricated in the molding department. We are of the opinion that although the employees of the molding department are an integral part of the Company's entire operations, nevertheless they are an identifiable group engaged in work sufficiently distinguishable from that of other production employees to warrant establishing them as a separate unit. Moreover, these employees have constituted a bargaining unit by virtue of the contract between the Company and the Molders for the past year. In view of these facts, we are of the opinion that the employees of the molding department should be permitted to continue to bargain as a separate unit if they so desire.

We shall make no final determination of the appropriate unit at this time, but shall direct that the question concerning representation which has arisen be resolved by means of separate elections by secret ballot among the employees in the voting units described below 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:

(1) All mechanics, molders, preformers, set-up men, expeditors, and janitors employed in the Company's molding department, excluding supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and clerical employees, to determine whether they desire to be represented by the Molders, the CIO, or neither;

(2) The remaining production and maintenance employees of the Company, excluding executives, supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and clerical employees, to determine whether or not they desire to be represented by the CIO.

Upon the results of the elections directed among the employees designated in voting units (1) and (2), above, will depend, in part, our determination of the appropriate unit or units, if any, governing employees in such groups.

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Plastimold, Inc., Attleboro, Massachusetts, 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 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 groups of employees described below who were employed by the Company at its plant in Attleboro, Massachusetts, 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 election:

(1) All mechanics, molders, preformers, set-up men, expeditors, and janitors employed in the Company's molding department, excluding supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and clerical employees, to determine whether they desire to be represented by International Molders and Foundry Workers Union of North America, Local No. 320 (AFL), or by United Rubber Workers of America (CIO), or by neither;

(2) The remaining production and maintenance employees of the Company, excluding executives, supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and clerical employees, to determine whether or not they desire to be represented by United Rubber Workers of America (CIO), for the purposes of collective bargaining.

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