

In the Matter of DEMUTH GLASS WORKS, INC. and FEDERATION OF GLASS,
CERAMIC & SILICA SAND WORKERS OF AMERICA

Case No. 9-R-1190.—Decided November 6, 1943

Mr. Thomas E. Shroyer, for the Board.

Mr. W. R. Schlehr, of Parkersburg, W. Va., for the Company.

Holmes, Lewis & Menendez, by Mr. W. T. Lewis, of Columbus, Ohio,
and Mr. Brooks Bowles, of Parkersburg, W. Va., for the C. I. O.

Mulholland, Robie & McErwen, by Mr. Richard R. Lyman, of Toledo,
Ohio, for the A. F. of L.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Federation of Glass, Ceramic & Silica Sand Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Demuth Glass Works, Inc., herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles E. Persons, Trial Examiner. Said hearing was held at Parkersburg, West Virginia, on October 11, 1943. The Company, the C. I. O., and American Flint Glass Workers of America, A. F. of L., herein called the A. F. of L., 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 the opportunity of filing briefs with the Board.

¹ Incorrectly referred to in the petition and other formal papers as Demuth Glass Company and corrected by stipulation at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Demuth Glass Works, Inc., a New York corporation, has its principal office and place of business in Brooklyn, New York, where it is engaged in the manufacture and distribution of laboratory glass equipment. In addition to its main plant at Brooklyn, the Company also operates a plant at Parkersburg, West Virginia, which plant was recently put into operation and is now engaged exclusively in the manufacture of laboratory glass tubing. The principal raw materials used in the Parkersburg plant with which this proceeding is primarily concerned, consist of sand and gravel, of which over 95 percent is obtained from points outside the State of West Virginia. The total value of the products from the Parkersburg plant for the current year is estimated to be in excess of \$100,000, all of which will be shipped to points outside the State of West Virginia. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Federation of Glass, Ceramic & Silica Sand Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

American Flint Glass Workers of America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 21, 1943, the C. I. O., claiming majority representation at the Company's Parkersburg plant, requested the Company to recognize it as the exclusive bargaining representative of the Parkersburg plant employees. The Company declined to grant the request upon the ground that it had a bargaining agreement with the A. F. of L.² Thereafter, upon failure of the parties to come to an agreement for a consent election, the C. I. O. filed its present petition for investigation and certification of representatives.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents

² There was no contention at the hearing that the contract constitutes a bar to the present proceeding.

a substantial number of employees in the unit hereinafter found 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 C. I. O. contends that the appropriate unit should consist of all production and maintenance employees at the Company's Parkersburg plant, excluding administrative, professional and executive employees, non-working foremen and office clerical help, not directly connected with production. The A. F. of L. and the Company urges that the unit should be upon a multiple employer basis and should be so defined as to conform to the coverage of a contract between the A. F. of L. and an employer association known as the National Association of Manufacturers of Pressed and Blown Glass Ware.

While it appears that the employer association has authority to bind its members in all matters pertaining to collective bargaining with the A. F. of L.,⁴ and by custom requires its members to maintain closed-shop contracts with that union, the Association does not cover the entire industry but represents between 50 and 60 plants of the approximately 100 plants in the industry. Moreover, although the Association has bargained with the A. F. of L. with respect to skilled workmen of the glass blower's craft for a period of 35 to 40 years, it is only since 1936 that such bargaining has been extended to machine operators in the glass industry of the type employed at the Parkersburg plant. The employees at the latter plant have never been specifically included in any bargaining agreement⁵ and have apparently never been organized by the A. F. of L.⁶

A comparison of the employees at Parkersburg with those at the Company's only other plant at Brooklyn, New York, indicates that the Parkersburg employees constitute a clearly distinguishable group in the Company organization. As contrasted with the employees at Parkersburg who are engaged in less skilled machine glass opera-

³ The Field Examiner reported that the C. I. O. had submitted 62 designations of which 45, dated between April and August 1943, including 8 undated, bore the apparently genuine signatures of persons whose names appear on the Company's current pay roll, containing 63 names within the alleged unit.

⁴ The members of the Association are, however, not thereby precluded from entering into supplemental contracts with their own employees where such contracts are not inconsistent with the minimum wage rates established by the Association agreements made in the exercise of this authority.

⁵ The Parkersburg plant was not in operation when the last association-wide agreement was negotiated in September of 1942.

⁶ The A. F. of L., relying upon its contract, submitted no evidence of representation among the Company's employees either in connection with the investigation by the Field Examiner or at the hearing before the Trial Examiner.

tions,⁷ the employees at the Brooklyn plant are highly skilled hand workmen of the glass blower's craft. At the hearing, uncontroverted evidence was adduced to the effect that because of the difference in skills it would be impractical to exchange employees between the Brooklyn and Parkersburg plants.⁸ While the latter plant receives orders from the main office at Brooklyn, it has a separate plant management⁹ and a separate local bank account for the handling of the plant pay roll. Of the products manufactured at Parkersburg, approximately 20 percent is shipped to the Brooklyn plant for additional processing or reshipment while a large part (apparently the balance) is shipped direct to customers from the Parkersburg plant.

Notwithstanding the above considerations, the A. F. of L. and the Company contend that the history of collective bargaining on an association-wide basis requires a finding that a unit confined to the Company's employees at Parkersburg is inappropriate for the purposes of collective bargaining. However, while it appears that the Association is an effective instrument for collective bargaining, and has, through a series of joint conferences with the A. F. of L., contributed to the maintenance of industrial peace in the glass industry, it is undisputed that throughout the period covered by the joint conferences, the employees of the Parkersburg plant have not been represented and have never had an opportunity to choose for themselves whether they desire to be represented in an association-wide unit. In addition thereto, it appears that the Parkersburg employees have maintained their membership in the C. I. O. despite unsuccessful attempts on the part of the latter to secure recognition as their bargaining representative and in the face of Company pressure to induce them to join the A. F. of L.¹⁰

Because of the difference in skills and separation in management of the Parkersburg employees, their previous lack of opportunity to choose between representation in a unit by themselves or as part of an association-wide unit, their continued adherence to an organization seeking separate representation in their behalf and the absence of

⁷ The machine glass operation was formerly carried on at the Brooklyn plant but was transferred to the Parkersburg plant.

⁸ Aside from the initial transfer of two supervisors at the opening of the Parkersburg plant, and the subsequent transfer of one production employee from the Brooklyn plant, there is no evidence of interchange of employees between the Brooklyn and Parkersburg plants.

⁹ The assistant plant manager at Parkersburg testified that he was in charge of labor relations at the Parkersburg plant.

¹⁰ The Company, acting under the belief that its closed-shop contract with the A. F. of L. though executed prior to the opening of and without reference to the Parkersburg plant, was nevertheless applicable thereto, posted on August 5, 1943, a notice on its bulletin board notifying its Parkersburg employees that since the Company had a closed-shop contract with the A. F. of L. it would be necessary for them to join that organization within 5 days. On August 12, 1943, a notice of similar import was placed in the pay envelope of each employee who, as the A. F. of L. reported to the Company, had not yet signed an A. F. of L. card.

any collective bargaining history covering Parkersburg employees in an association-wide unit, we are of the opinion and find that the Parkersburg employees constitute a unit appropriate for the purposes of collective bargaining.¹¹

We find that all production and maintenance employees employed at the Company's Parkersburg plant, excluding administrative, professional and executive employees, non-working foremen and office help not directly connected with production, and all 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 employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

While the A. F. of L. made no actual showing of representation among the Parkersburg employees, we shall, in view of its possible interest as indicated by its association-wide agreements aforesaid, include its name on the ballot in the election directed among the employees of the Company.¹²

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 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 Demuth Glass Works, Inc., Parkersburg, West Virginia, 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 Ninth 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,

¹¹ See *Matter of Libbey-Owens-Ford Glass Company*, 31 N. L. R. B. 569; *Matter of Shipowners Association of the Pacific Coast, et al*, 32 N. L. R. B. 668. Cf. *Matter of Rayonier, Incorporated*, 52 N. L. R. B. 1269.

¹² See *Matter of The Arundel Corporation*, 5-R-1370, 53 N. L. R. B. 466.

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 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 Federation of Glass, Ceramic & Silica Sand Workers of America, C. I. O., or by American Flint Glass Workers of America, A. F. of L., for the purposes of collective bargaining, or by neither.