

In the Matter of COMMERCE PATTERN FOUNDRY AND MACHINE COMPANY
and LOCAL 174, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIR-
CRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-
CIO)

Case No. 7-R-1571.—Decided November 23, 1943

Messrs. Chester A. Cahn and Joseph F. Clarke, both of Detroit, Mich., for the Company.

Mr. Nicholas J. Rothe, of Detroit, Mich., for the UAW.

Messrs. Robert O. Brown and James G. Beck, both of Detroit, Mich., for the Society.

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

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by Local 174, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), herein called the UAW, alleging that a question affecting commerce had arisen concerning the representation of employees of Commerce Pattern Foundry and Machine Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Max Rotenberg, Trial Examiner. Said hearing was held at Detroit, Michigan, on October 22, 1943. The Company, the UAW, and Local No. 1, Society of Tool and Die Craftsmen of America, hereinafter called the Society, 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

Commerce Pattern Foundry and Machine Company, a Michigan corporation with its principal office and place of business located in 53 N. L. R. B., No. 156.

Detroit, Michigan, is engaged in the manufacture of tools and dies, metal castings, and wood and metal patterns. During the first 6 months of 1943, the Company purchased raw materials valued in excess of \$5,000, of which approximately 40 percent was purchased from points outside the State of Michigan and shipped to the Company's Detroit plant. During the same period, the sales of the Company's finished or partially finished products were in excess of \$100,000, of which approximately 20 percent was delivered to points outside the State of Michigan. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local 174, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local No. 1, Society of Tool and Die Craftsmen of America, is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated September 9, 1943, the UAW requested recognition from the Company as the representative of its production and maintenance employees. The Company replied by letter dated September 17, 1943, in which it refused to grant such recognition on the ground that it was currently operating under contracts with another labor organization. The present status of the Company with respect to collective bargaining is evidenced by three contracts with the Society covering its employees engaged in the foundry, toolroom, and machine shop, respectively. The termination clauses in each of these contracts are identical, and provide as follows:

This agreement shall remain in full force and effect to and including January 2, 1943, and until January 15, 1944.

This agreement may be amended or terminated at any time during its term, provided, however, the party desiring to amend or terminate must notify the other of its desire at least ninety (90) days before the date set for such amendment or termination, and if this termination or amendment is not served, this agreement will go on from year to year.

The exact intent of the parties as to the duration of these contracts is not entirely clear. If the parties intend that the contracts are terminable at any time upon 90 days' notice by either party, they do not con-

stitute a bar to the proceeding herein.¹ On the other hand, even if the clauses may be construed as requiring that notice be given at least 90 days prior to January 15, 1944, the petition herein having been filed on September 10, 1943, it is apparent that the claim of the UAW was timely made. Accordingly, under either interpretation, the contracts do not constitute a bar to this proceeding.

Statements of the Acting Regional Director and the Trial Examiner, introduced into evidence at the hearing, indicate that the UAW represents a substantial number of employees in the unit hereinafter found appropriate.²

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 UAW seeks a unit comprised of all production and maintenance employees of the Company, including toolroom, machine shop, and foundry employees, but excluding pattern makers, supervisory, clerical, and plant-protection employees. The Society, without objecting to the foregoing exclusions, contends that there should be three separate units composed of the employees of the foundry, machine shop, and toolroom, respectively, in accordance with its present collective bargaining agreements with the Company. The Company takes no position with respect to the appropriateness of the unit or units.

The Society has bargained with the Company on behalf of the toolroom and machine shop employees for approximately 5 years, and for the employees of the foundry for approximately 3 years. Until 1943, the toolroom and machine shop employees were included within one unit, but because of the fact that the National War Labor Board has promulgated regulations concerning employees of the toolroom which differ from those concerning the employees in the machine shop, the

¹ *Matter of Semet Solvay Company*, 47 N. L. R. B. 17; *Matter of Guistina Brothers Lumber Co.*, 41 N. L. R. B. 1243.

² The Acting Regional Director reported that the UAW submitted 237 designation cards, all of which bore apparently genuine original signatures of persons appearing upon the Company's pay roll of September 29, 1943; said pay roll contained a total of 480 names in the unit hereinafter found appropriate.

The Trial Examiner reported that the UAW submitted four additional designations bearing the apparently genuine original signatures of persons whose names appeared upon the Company's pay roll of September 29. He further reported the showing made by the UAW in the foundry, toolroom, and machine shop, respectively, using only apparently genuine original signatures of persons whose names appear upon the above-mentioned pay roll.

	UAW Designations	No. in Unit
Foundry	110	178
Toolroom	53	186
Machine shop.....	86	116

The Society relies upon its current collective bargaining agreements with the Company for the establishment of its interest herein.

Company and the Society have agreed upon a separation of these groups, and, as stated above, are presently operating under separate contracts covering each of them.

While we would not ordinarily be inclined to divide into separate units those groups of employees herein presented in the face of a desire on the part of a labor organization to represent them in a single unit, we are constrained under the circumstances herein presented to accord added significance to the bargaining history of the Company which indicates that they may constitute three separate units.³ On the other hand, it is apparent that employees in the three groups may properly constitute a single unit.⁴ Accordingly, we shall direct separate elections among the employees of the foundry, toolroom, and machine shop, respectively; the employees engaged in each of these groups shall choose whether they desire to be represented by the UAW, the Society, or by neither. Upon the results of these elections will depend, in part, determination of the unit or units. If either labor organization is chosen as the bargaining representative of the employees in each of the three groups, we shall find a single unit appropriate; if, however, neither the UAW nor the Society wins the election in all three voting groups, each group shall constitute a separate and distinct unit.

We find that the question concerning representation which has arisen can best be resolved by means of separate elections by secret ballot among the employees in the groups described in the Direction of Elections herein, who were employed during the pay-roll period immediately preceding the date of the Direction, subject to the limitations and additions set forth therein.

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 Commerce Pattern Foundry and Machine Company, Detroit, Michigan, separate 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 Seventh Region, acting in this matter as agent for the National Labor Relations Board,

³ See *Matter of Eagle Iron Works*, 46 N. L. R. B. 1145 (foundry employees); *Matter of American Propeller Corporation*, 43 N. L. R. B. 518 (toolroom employees); *Matter of Barrett Equipment Company*, 52 N. L. R. B. 518 (toolroom employees).

⁴ *Matter of Buffalo Pipe and Foundry Corporation*, 26 N. L. R. B. 848; *Matter of American Radiator and Standard Sanitary Corporation*, 35 N. L. R. B. 172.

and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the following groups of employees of the Company 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 elections, as well as those supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, pattern makers, clerical employees, and plant-protection employees, to determine whether they desire to be represented by Local 174, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, or by Local No. 1, Society of Tool and Die Craftsmen of America, for the purposes of collective bargaining, or by neither:

- (1) All production and maintenance employees of the Company engaged in its toolroom;
- (2) All production and maintenance employees engaged in its machine shop;
- (3) All production and maintenance employees engaged in its foundry.