

In the Matter of **STERLING STEEL FOUNDRY COMPANY and UNITED STEELWORKERS OF AMERICA, CIO**

*Case No. 6-R-771.—Decided November 25, 1943*

*Mr. G. C. Smith*, of Braddock, Pa., and *Mr. Donald M. Rolston*, of Pittsburgh, Pa., for the Company.

*Mr. Philip M. Curran* and *Mr. James A. Thomas*, of Homestead, Pa., for the U. S. A.

*Mr. Frank Voit*, of Cincinnati, Ohio, and *Mr. William H. Schell*, of Pittsburgh, Pa., for the Molders.

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

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by the United Steelworkers of America, CIO, herein called the U. S. A., alleging that a question affecting commerce had arisen concerning the representation of employees of Sterling Steel Foundry Company, Braddock, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on October 15, 1943. The Company, the U. S. A., and International Molders and Foundry Workers Union of North America, Local Union No. 46, 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 Molders made a motion to dismiss the petition herein which the Trial Examiner referred to the Board. For reasons hereinafter stated the motion is hereby denied. 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:  
53 N. L. R. B., No. 168.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Sterling Steel Foundry Company, a Pennsylvania corporation, with its office and principal place of business located in Braddock, Pennsylvania, is engaged in the manufacture and sale of steel ship castings and other castings. During the past 12 months the Company has purchased raw materials having a value in excess of \$100,000. During the same period the value of the Company's manufactured products was in excess of \$500,000, of which more than 10 percent was sold and shipped to points outside the State of Pennsylvania. From the month of July 1943 to the present time, approximately 80 percent of the Company's output was produced under contracts with the United States Maritime Commission. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

United Steelworkers 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 Union No. 46, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

By letter dated June 30, 1943, the U. S. A. requested recognition from the Company as the exclusive bargaining representative of its production and maintenance employees. This request was refused by the Company. On July 1, 1943, a representative of the Molders contacted the Company, and insisted upon the latter's adherence to the contract between the Molders and Foundrymen of Pittsburgh and vicinity, herein called the Association, of which the Company was a member. In answer thereto, the Company informed the Molders of the claim of representation made by the U. S. A. Thereafter, the Molders consummated negotiations which it had been conducting with the Association since June 20, by executing a contract on July 8, 1943, continuing the recognition of the Molders as the collective bargaining representative of all employees of the members of the Association upon an association-wide basis. The Molders contends that its contract with the Association is a bar to this proceeding. However, since

the Molders' contract was executed subsequent to the request of the U. S. A. for recognition, we find that it does not constitute a bar to the proceeding herein.<sup>1</sup>

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the U. S. A. and the Molders each represents a substantial number of employees in the over-all unit sought by the U. S. A.<sup>2</sup>

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 U. S. A. contends that the appropriate unit should consist of all production and maintenance employees of the Company exclusive of foreman, assistant foremen, supervisors in charge of any class of labor, policemen, watchmen, clerical and salaried employees, and any supervisory employees with authority to hire, promote, discharge, discipline, or recommend such action. The Molders does not contest the propriety of the foregoing inclusions and exclusions, but contends that the company-wide unit sought by the U. S. A. is inappropriate and that the employees engaged therein should be bargained for in an association-wide unit. The Company, while ostensibly assuming a neutral position, apparently prefers the preservation of the *status quo* with respect to its bargaining relations, i. e., it considers the Molders as the more appropriate bargaining representative of those of its employees engaged as molders, coremakers, and apprentices, and the U. S. A. of those employees who are members of that organization.

The Association is an informal organization of foundry and machine shop employers which was formed around 1903 for the purpose of conducting bargaining relations with the Molders. The Association has no written constitution, bylaws, articles of association, or formal permanent records, nor does it collect dues or maintain a treasury. It appears to hold no meetings of its members other than for the formation of a negotiating committee for the purposes of bargaining with the Molders. Because of its informal structure the Association has no way of enforcing its commitments upon its members and relies upon their voluntary compliance with the agreements

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<sup>1</sup> *Matter of Long-Bell Lumber Company*, 41 N. L. R. B. 389; *Matter of Superior Coach Corporation*, 39 N. L. R. B. 926

<sup>2</sup> The Regional Director reported that the U. S. A. submitted 161 application cards, of which 125 bore apparently genuine original signatures and contained the names of persons appearing upon the Company's pay roll of August 10, 1943. He further reported that the Molders submitted 121 membership cards, of which 56 bore apparently genuine original signatures and contained the names of persons appearing upon the above-mentioned pay roll, and that in addition the Molders submitted a certified list of its members containing 71 names, of which 57 appeared upon the afore-mentioned pay roll. Said pay roll contained the names of 290 persons in the unit sought by the U. S. A.

executed by its negotiating committee. In 1941, the Association was comprised of 20 members; however, 3 of these subsequently withdrew because of difficulties arising from negotiations with the Molders.<sup>3</sup>

From the date of its formation and until 1941, the Association confined the scope of its recognition of the Molders to a limited group of employees, recognizing the latter solely as the representative of those employees of its members engaged as molders, core makers, and apprentices; this recognition is evidenced by a series of contracts covering such employees in an association-wide unit. In 1941, however, subsequent to an amendment of its constitution which enabled it to accept for membership all employees engaged in and about foundries and core rooms, the Molders sought and obtained from the bargaining committee of the Association a contract which provided for recognition of the Molders as the exclusive bargaining representative of all production and maintenance employees of members of the Association.<sup>4</sup> This agreement was not accepted in its entirety by the Company<sup>5</sup> due to the fact that in 1937 it had executed a contract with the U. S. A. recognizing the latter as the collective bargaining representative of certain of its semi-skilled and unskilled employees who were members thereof.<sup>6</sup> The Company did, however, ratify and effectuate the 1941 agreement insofar as its terms related to employees engaged as molders, core makers, and apprentices. This situation continued until 1943 when, after the current agreement was executed by the Association and the Molders, the Company gave notice to the Association that, due to the fact that it had not been consulted, it refused to consider itself bound in any respect by the contract. Furthermore, considerable doubt exists with respect to whether or not the Company is presently a member of the Association.<sup>7</sup>

Thus it appears that the Company has pursued, since 1941, an individualistic course of action, adopting only those portions of the agreement between the Molders and the Association which it chose and rejecting the balance. It further appears that, since about August 1943, the Company no longer considered itself bound by any of the commitments made by the Association. In view of these circumstances we are of the opinion that the Company can no longer be con-

<sup>3</sup> The record is not clear whether or not the Company was one of this group.

<sup>4</sup> This contract further provided that "all employees who are not members of [the Molders] must become members within a period of 15 days after beginning work . . . that all who are now members must remain members during the life of this agreement." This provision was not changed in the 1942 supplemental agreement, and was incorporated in the current agreement between the parties.

<sup>5</sup> The Company was not alone in assuming this position. In 1936 other members of the Association had executed contracts with labor organizations other than the Molders covering employees not included within the Association contract.

<sup>6</sup> In 1938, this agreement was extended by the parties for an indefinite period

<sup>7</sup> On page 42 of the record is the following:

Mr. Voit:

Q. Mr. Smith, you stated that you don't know whether you was (sic) a member of the Foundrymen's Association of Pittsburgh and Vicinity?

A. That's right.

sidered as among those employers for whom the Association is authorized to conduct collective bargaining negotiations. Accordingly, the contention of the Molders that the association-wide unit is appropriate is without merit insofar as it relates to the Company.

We have previously found on several occasions that molders, core makers, and apprentices may properly be included within an industrial unit comprised of employees of a foundry.<sup>8</sup> On the other hand, the Company has distinguished between this group and its remaining production and maintenance employees, and has conducted over a long period of time separate collective bargaining relations with respect to them. Under these circumstances, we are of the opinion that the molders, core makers, and apprentices could properly constitute either a separate unit or be included within the large industrial unit. Accordingly, we shall conduct separate elections among those employees engaged as molders, core makers, and apprentices, and among the remaining production and maintenance employees of the Company. However, in view of the representation of the Molders among the employees in the residual group,<sup>9</sup> and the fact that the employees engaged therein are eligible for membership in that organization, we shall place the Molders on the ballot in the election conducted among such remaining production and maintenance employees, permitting the employees in both voting groups to choose whether they desire to be represented by the U. S. A., the Molders, or by neither. Upon the results of these elections will depend, in part, whether or not the employees engaged as molders, core makers, and apprentices shall be part of the production unit.

We find that the question concerning representation which has arisen can best be resolved by means of 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 of Elections, 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

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<sup>8</sup> *Matter of Draper Corporation*, 46 N. L. R. B. 107; *Matter of Burt Foundry Company*, 45 N. L. R. B. 957.

<sup>9</sup> A statement of the Trial Examiner introduced into evidence at the hearing indicates that the Molders represents 66 employees in the residual group, and that said group contains approximately 201 employees.

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Sterling Steel Foundry Company, Braddock, Pennsylvania, 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 Sixth 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 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 employees 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, to determine whether they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by International Molders and Foundry Workers Union of North America, Local Union No. 46, for the purposes of collective bargaining, or by neither.

(1) All employees of the Company engaged as molders, molder apprentices, core makers, and core maker apprentices;

(2) All remaining production and maintenance employees of the Company, excluding foremen, assistant foremen, supervisors in charge of any class of labor, policemen, watchmen, and clerical and salaried employees.

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