

In the Matter of OWENS-ILLINOIS GLASS COMPANY and OWENS-ILLINOIS GLASS WORKERS UNION, AFFILIATED WITH DISTRICT 50, UNITED MINE WORKERS OF AMERICA

In the Matter of OWENS-ILLINOIS GLASS COMPANY and GLASS BOTTLE BLOWERS ASSOCIATION OF U. S. AND CANADA, A. F. OF L.

Cases Nos. 14-R-783 and 14-R-806 respectively.—Decided December 4, 1943

Mr. James M. Guiher, of Clarksburg, W. Va., *Mr. A. J. Martin*, of Toledo, Ohio, *Messrs. Floyd Flexon* and *W. W. Wood*, both of Alton, Ill., for the Company.

Messrs. Jack Battuello and *Jule Sanks*, of Alton, Ill., for the U. M. W.

Mr. Gish A. Johnson, of East Alton, Ill., and *Mr. Newton Black*, of Alton, Ill., for the Bottle Blowers.

Mr. W. O. Hayes, of Alton, Ill., for the Intervenors.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended and original petitions filed by Owens-Illinois Glass Workers Union, affiliated with District 50, United Mine Workers of America, herein called the U. M. W., and Glass Bottle Blowers Association of U. S. and Canada, A. F. of L., herein called the Bottle Blowers, alleging that questions affecting commerce had arisen concerning the representation of employees of Owens-Illinois Glass Company, Alton, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Charles K. Hackler, Trial Examiner. Said hearing was held at St. Louis, Missouri, on November 2, 1943. The Company, the U. M. W., the Bottle Blowers, the Brotherhood of Carpenters and Joiners of America, and American Federation of Labor and various affiliated organizations herein collectively called

53 N. L. R. B., No. 205.

the Intervenor,¹ 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 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

Owens-Illinois Glass Company, an Ohio corporation, has its principal place of business at Toledo, Ohio, and has, in addition to others, 11 plants engaged in the manufacture and distribution of glass containers. Of the plants so engaged, plant No. 7, located at Alton, Illinois, is the only plant involved in the present proceeding. During the calendar year 1942, the Company purchased for use at its said Alton, Illinois, plant, raw materials exceeding \$100,000 in value, of which more than 50 percent was obtained from points outside the State of Illinois. During the same period, the Company manufactured and shipped from this plant finished products exceeding \$100,000 in value, of which more than 50 percent was shipped to points outside the State of Illinois. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Owens-Illinois Glass Workers Union is a labor organization affiliated with District 50, United Mine Workers of America, admitting to membership employees of the Company.

Glass Bottle Blowers Association of U. S. and Canada is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; International Union of Operating Engineers, Local Union No. 41; International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America; Bricklayers, Masons and Plasterers International Union, Local No. 8; United Brotherhood of Painters and

¹ In addition to the general appearance covering the Carpenters and affiliated organizations in the A. F. of L., separate appearances were entered on behalf of the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America and International Brotherhood of Electrical Workers, Local 649. A representative of these unions announced at the hearing that the sole purpose of their intervention in these proceedings was to request the Board, in view of a jurisdictional dispute with the Bottle Blowers, to place "American Federation of Labor and its affiliated International Unions" on the ballot in any plant-wide election that might be ordered.

Decorators of America; Pipefitters Local Union No. 553; United Brotherhood of Carpenters and Joiners of America, Local 377; and International Brotherhood of Electrical Workers, Local No. 649, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On October 13, 1943, the U. M. W., claiming majority representation of the Company's employees at its No. 7 plant at Alton, Illinois, requested in writing that the Company arrange a conference for the purposes of collective bargaining but received no reply from the Company. In addition thereto, the U. M. W. filed upon the same date its present petition for investigation and certification of representatives.

On or about October 20, 1943, a representative of the Bottle Blowers orally requested of the Company's plant manager that the Company recognize the Bottle Blowers as exclusive bargaining representative for all employees of the Company not under contract at its No. 7 Alton, Illinois plant. The Company's plant manager declined to grant the Bottle Blowers' request for recognition until after disposition of the petition previously filed with the Board by the U. M. W.

A statement of the Trial Examiner, introduced in evidence at the hearing, indicates the Bottle Blowers and the U. M. W. represent 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 U. M. W., the Bottle Blowers, and the Company agree that the appropriate unit should be limited to the employees of the Company's No. 7 plant at Alton, Illinois, and that all hourly paid employees at this plant, excluding plant superintendent, department heads, shift foremen and assistant shift foremen, and automatic operators and apprentices, mould makers, and tank foremen presently under contract or the subject of collective bargaining negotiations,³ belong within

² The Trial Examiner reported that the Bottle Blowers submitted evidence of representation in the form of 573 designations of which 502, dated between February and October 1943, including 14 undated, bore the apparently genuine signatures of persons whose names appear on the Company's pay roll of October 15, 1943, containing 2,030 names within the claimed appropriate unit.

The Trial Examiner further reported that the U. M. W. had submitted 779 designations of which 592, dated between November 1941 and October 1943, including 57 undated, bore the apparently genuine signatures of persons whose names appear on the said pay roll containing 2,030 names within the claimed appropriate unit.

³ The Company, a member of the Glass Bottle Manufacturers, has had for several years contracts with a labor organization known as American Flint Glass Workers Union of

the appropriate unit. The only dispute concerns the question of including hourly paid office clerks and hourly paid employees generally known as crew leaders. The Company and the Bottle Blowers would include both hourly paid office clerks and crew leaders.⁴ The U. M. W., on the other hand, while seeking to include hourly paid factory clerks,⁵ would exclude office clerks and crew leaders from the appropriate unit. The intervening A. F. of L. craft unions do not seek separate craft units or offer any contention as to the appropriateness of a unit upon a plant-wide basis.

With respect to the issue of including or excluding hourly paid office clerks from the appropriate unit, it appears that the Company employs in its main office 74 hourly paid clerks including typists, stenographers, comptometer operators, and accounting department employees, who work under the supervision of the Service Manager and Plant Auditor. The duties performed by the hourly paid office clerks are substantially the same as those of 65 salaried office clerks whom all parties agree should be excluded from the appropriate unit.

In addition to the hourly paid clerks in the main office, the Company also employs a total of 22 hourly paid clerks and 1 typist in its History and Specifications Department, which department keeps records and compiles data concerning customers' specifications for bottles in relation to the actual bottles produced. The clerks in this department work in a glassed-in office space located on the production floor of the factory. They do routine typing, filing, and the tabulation of information concerning the bottles that have been produced. Their duties do not require them to go into production departments to secure data and apparently their work is strictly of a record-keeping nature. In addition thereto, it appears that they are under the supervisor of the History and Specifications Department as distinguished from the production departments located on the same floor.

We are of the opinion and find, in accordance with our usual custom with respect to units of production employees, that the hourly

North America, covering mould makers and tank foremen in the mould repair department of the plant herein involved. The last of these contracts expired by its terms on August 31, 1943, and a new contract is now under negotiation. In addition thereto, the Company has had annual contractual relations with the Bottle Blowers and is under a present existing contract with this union covering automatic operators in the forming department in this and other plants of the Company. No contention was made at the hearing that either contract was a bar to the present proceeding. All parties, including the Bottle Blowers and the U. M. W., and the Intervenors, agreed that the employees whom the Bottle Blowers and the Flint Glass Workers Union either have under contract or for whom they are presently bargaining, should be excluded from the appropriate unit.

⁴The term crew leader is used to designate not only employees having this particular title but also employees having substantially similar duties and known under various classifications. Among the latter are "planning foremen" whom the Company and the Bottle Blowers consider the same as crew leaders, and therefore seek their inclusion within the appropriate unit.

⁵All parties are agreed that the one to three hourly paid factory clerks on the pay roll in each of the production and maintenance departments should be included within the appropriate unit.

paid office employees both in the main office and in the History and Specifications Department do not have sufficient interests in common with the production employees to be included with the latter in the same unit. We shall, accordingly, exclude all office clerical employees but include factory hourly paid clerical employees within the appropriate unit.⁶

There remains for consideration the question of including or excluding from the appropriate unit certain employees in the several production departments of the plant known to the workers as "crew leaders." The evidence shows that there are about 100 employees popularly known as crew leaders, of whom 72 appear on the pay roll of October 15, 1943, as inspectors in the packing department. Four others appear on the pay roll as "planning foremen" in the Warehouse and Shipping department, while the remainder are apparently scattered throughout the various departments. All such crew leaders are hourly paid and receive 15 to 20 cents per hour more than the men who work under them. The credible evidence discloses that these crew leaders spend between 20 and 50 percent of their time working with the crews, the remainder of their time being spent in supervising the workers on the crews and keeping written records relating to bottle defects and liaison work with other departments. While they have no power to hire or discharge, they have the duty to report the quality of work or any infraction of rules observed by them to the shift foremen.⁷

The Company and the Bottle Blowers contend that crew leaders are under no duty to make recommendations to the shift foremen and state that any such recommendations would not of necessity result in action by the foremen. On the other hand, the testimony of all ordinary witnesses together with that of Lowell McCracken, a planning foreman who appeared as a witness for the Bottle Blowers, clearly demonstrates that crew leaders have transferred employees from one crew to another, have authorized specific employees to work overtime, have told employees not to report for work on the crews to which they were assigned, and generally are regarded by employees as having the power of effective recommendation.⁸ Moreover, while crew leaders are eligible to membership in the Bottle Blowers, the U. M. W. excludes them and in fact has none among its membership. We are of the opinion, and find, that since crew leaders can effectively recommend employees for transfer and have the authority to report employees for disciplinary action, they are supervisory employees within

⁶ See *Matter of Chemical Construction Company*, 50 N. L. R. B. 223.

⁷ Crew leaders do not, however, make recommendations as to the penalties which should be applied for the rule infractions reported by them to the shift foremen.

⁸ The evidence discloses that regardless of any duty, crew leaders may recommend the transfer of crew members to other jobs.

our customary definition.⁹ We shall, accordingly, exclude crew leaders from the appropriate unit.

We find that all hourly paid employees of the Company's No. 7 plant at Alton, Illinois, including factory clerks, but excluding all office clerks; automatic operators, apprentices and learners presently or formerly under contract,¹⁰ mould makers and tank foremen for whom American Flint Glass Workers Union is bargaining; the plant superintendent, department heads, shift foremen, assistant shift foremen, crew leaders (including inspectors in the Packing Department and planning foremen in the Warehouse and Shipping Department), and all other 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

As previously stated, the intervening A. F. of L. unions have appeared for the sole purpose of requesting that they be included on the ballot in any election under the group designation of "American Federation of Labor and Its Affiliated International Unions." On the other hand, it appears that, aside from the Carpenters and the Boilermakers, which unions offered only a meager showing of membership,¹¹ none of the intervenors furnished any evidence of representation, although all were served with notice of the hearing. The request for the group designation is, moreover, opposed by the Bottle Blowers, which asks that its name be the only A. F. of L. choice to appear on the ballot. In view of the *de minimis* showing of the intervenors, we shall not accord them a place on the ballot in the election hereinafter referred to.¹²

⁹ See *Matter of Food Machinery Corporation*, 41 N. L. R. B. 1428; *Matter of Pass and Seymour, Inc.*, 51 N. L. R. B. 1135. See also *Matter of Owens-Illinois Glass Company*, 25 N. L. R. B. 92, 101, wherein the Board found that the present company was responsible for the anti-union activity of supervisors known as "boss packers" in its Fairmont, West Virginia, plant. In this connection, Flexon, plant manager of the plant involved in this proceeding, testified that the term "crew leaders" had arisen in recent years and replaced the earlier designation of "boss packers." Furthermore, the Bottle Blowers took the position, undisputed by the Company, that so-called "crew leaders" covered by Bottle Blowers contracts at other plants of the Company have substantially the same powers as the crew leaders involved in this case.

¹⁰ While learners and apprentices to automatic operators are not included under the present contract between the Company and the Bottle Blowers, all parties agreed that learners and apprentices should be excluded from the present bargaining unit.

¹¹ The Carpenters furnished evidence that it represented 8 employees out of a total of 267 within its claimed craft jurisdiction.

The Boilermakers offered evidence that it represented 3 employees out of 19 claimed within its jurisdiction.

¹² See *Matter of Ken Rad Tube and Lamp Corporation*, 42 N. L. R. B. 1235.

The Bottle Blowers requests that it appear on the ballot as "Bottle Blowers Association of the U. S. and Canada, affiliated with the American Federation of Labor." The United Mine Workers requests that it appear on the ballot as "Owens-Illinois Glass Workers Union, District 50, U. M. W. of A." These requests are hereby granted.¹³

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 pay-roll period immediately preceding the date of our 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 National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Owens-Illinois Glass Company, Alton, Illinois, 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 Fourteenth 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 any 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 Owens-Illinois Glass Workers Union, District 50, U. M. W. of A., or by Glass Bottle Blowers Association of the U. S. and Canada, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

¹³ The Company suggests that the U. M. W.'s reference to the name of the Company as part of its title should not be permitted as the official designation of the Union upon the ballot in the election hereinafter directed. However, in the absence of circumstances from which confusion might arise as to the identity of a particular union, the Board has generally permitted labor organizations to appear on the ballot under such names as they may choose to adopt. The suggestion of the Company is, therefore, dismissed as without merit.