

In the Matter of REHOBOTH PORCELAIN ENAMEL Co. and INTERNATIONAL BROTHERHOOD OF FOUNDRY EMPLOYEES, LOCAL No. 118

Case No. 1-R-1636.—Decided December 8, 1943

Mr. Humphrey Barker, of Taunton, Mass., and *Mr. George Grosser*, of Kalamazoo, Mich., for the Company.

Mr. Stephen Zehala, of Uniontown, Pa., and *Mr. George L. Dooley*, of Taunton, Mass., for the Brotherhood.

Mr. Bartie Allen, of Taunton, Mass., for the Stove Mounters.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Foundry Employees, Local 118, herein called the Brotherhood, alleging that a question affecting commerce had arisen concerning the representation of employees of Rehoboth Porcelain Enamel Co., Rehoboth Village, 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 Taunton, Massachusetts, on November 10, 1943. The Company, the Brotherhood, and Stove Mounters' International Union, Local 95 (A. F. L.), herein called the Stove Mounters, 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

Rehoboth Porcelain Enamel Co., a Massachusetts corporation with its sole place of business located at Rehoboth Village, Massachusetts, 53 N. L. R. B., No. 227.

is engaged in the fabrication of sheet iron and enameling of sheet iron and castings. The Company purchases semi-annually raw materials for use at its Rehoboth plant valued at approximately \$30,000, of which about 40 percent is received from points outside the State of Massachusetts. During the 6 months ending September 30, 1943, the Company sales approximated \$90,000 in value, of which about 1 percent was sold to points outside the State of Massachusetts. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Foundry Employees, Local No. 118, is an unaffiliated organization, admitting to membership employees of the Company.

Stove Mounters' International Union, Local 95, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 29, 1942, the Company and the Stove Mounters executed a contract covering the former's production and maintenance employees. The contract contained no termination clause, and was considered by the parties thereto as one running for an indefinite term.¹ On or about September 17, 1943, the Brotherhood requested recognition from the Company as the exclusive bargaining representative of its employees. The Company took the position that the above-mentioned contract prohibited it from bargaining with the Brotherhood. Since this contract contains no expiration date and appears to be one for an indefinite period, we find that it does not constitute a bar to a present determination of representatives.²

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Brotherhood represents a substantial number of employees in the unit hereinafter found appropriate.³

¹ The record discloses the following testimony :

Trial Examiner GREENE : ". . . Is it the contention of the Company that the contract would continue and continue . . . ?"

Mr. GROSSER : "Yes, sir."

Trial Examiner GREENE : "Then it is a contract for an indefinite number of years, or until such time as demands will be made upon the Company for a new contract?"

Mr. GROSSER : "Yes, sir."

² Cf. *Matter of Phelps Dodge Refining Corp.*, 40 N. L. R. B. 1159; *Matter of Allegheny Ludlum Steel Corporation*, 40 N. L. R. B. 1285.

³ The Regional Director reported that the Brotherhood submitted 14 dues books made out to employees whose names appeared upon the Company's pay roll for the week prior to October 12, 1943. Said pay roll contained a total of 26 names in the appropriate unit.

The Stove Mounters relies upon its contract with the Company dated July 29, 1942, for the establishment of its interest.

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

Substantially in accordance with a stipulation of the parties, we find that all production and maintenance employees of the Company, excluding all supervisory employees with authority to hire, promote, discipline, discharge, or otherwise effect changes in the status of employees, or effectively recommend such action, clerical employees, watchmen, and guards, 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 pay-roll period immediately preceding the date of the 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 the 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 Rehoboth Porcelain Enamel Co., Rehoboth Village, Massachusetts, 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 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 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 those employees 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 International Brotherhood of Foundry Employees, Local 118, or by Stove Mounters' International Union, Local 95, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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