

In the Matter of OWENS-ILLINOIS CAN COMPANY and UNITED STEEL-
WORKERS OF AMERICA, DISTRICT #8, CIO

Case No. 5-R-1398.—Decided January 20, 1944

Mr. Robert A. Levett, of Baltimore, Md., for the Board.

Mr. Charles Ruzicka, of Baltimore, Md., and *Mr. Charles W. Racine*, of Toledo, Ohio, for the Company.

Mr. I. Duke Arnet, of Baltimore, Md., for the CIO.

Messrs. Isidor Roman and *Jacob D. Edelman*, both of Baltimore, Md., for the Teamsters and the IAM Locals.

Mr. Benjamin Robinson, of New York City, and *Mr. Robert Bircher*, of Baltimore, Md., for the Lithographers.

Mr. William Deaton, of Baltimore, Md., for the Operating Engineers Locals.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, District #8, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Owens-Illinois Can Company, at its plant in Baltimore, Maryland, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel H. Jaffee, Trial Examiner. Said hearing was held at Baltimore, Maryland, on November 18 and 19, 1943. The Company, International Association of Machinists, Lodges Nos. 186 and 1302, International Union of Operating Engineers, Locals Nos. 272 and 272 A, Amalgamated Lithographers of America, Local No. 18, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 355, appeared and participated.¹ All parties were afforded full opportunity to be heard, to examine and

¹ Warehouse Employees' Union Local No. 570, was duly served with Notice of Hearing, but failed to appear at the hearing.

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 granted 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 Can Company is a Delaware corporation, operating three plants, one in Chicago, Illinois, one in McKees Rocks, Pennsylvania, and one in Baltimore, Maryland. Only the Baltimore plant is involved in this proceeding. Under normal conditions the Company manufactures metal containers of various kinds. At the present time, however, the Company's facilities are devoted almost exclusively to the production of articles used by the armed forces.

The Baltimore plant annually uses raw materials, consisting principally of steel plate, valued in excess of \$500,000. Over 50 percent of these raw materials is shipped to said plant from points outside the State of Maryland. The plant annually produces finished products valued in excess of \$1,000,000, of which over 50 percent is shipped from the plant to points outside the State of Maryland.

The Company admits, and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, District #8, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Lodge No. 186 and Lodge No. 1302, International Association of Machinists, affiliated with the American Federation of Labor and the Baltimore Metal Trades Council, herein called IAM Lodge No. 186 and IAM Lodge No. 1302, respectively, are labor organizations admitting to membership employees of the Company.

Local 272 and Local 272 A, International Union of Operating Engineers, affiliated with the American Federation of Labor and the Baltimore Metal Trades Council, herein called Engineers Local 272 and Engineers Local 272 A, respectively, are labor organizations admitting to membership employees of the Company.

Amalgamated Lithographers of America, affiliated with the American Federation of Labor and the Baltimore Metal Trades Council, herein called the Lithographers, is a labor organization admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 355, affiliated with the American Federation of Labor, herein called the Teamsters, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company stipulated that on September 17, 1943, it received a letter from the CIO requesting recognition as the exclusive bargaining representative of the Company's production and maintenance employees. The CIO likewise stipulated that it received a reply from the Company shortly thereafter, informing the CIO that in 1940 the Board had certified five other unions as bargaining agents for its employees; that the Company had negotiated annual contracts with these unions ever since; and that the Company could not negotiate with any other union unless that union were certified by the Board as the representative of its employees. Thereafter, on September 20, 1943, the CIO filed its petition for investigation and certification. At the time of the aforesaid correspondence the Company was under contract with the intervenors in this proceeding.² Said contract, by its terms, was to be in effect until November 1, 1943, and was to be automatically renewed from year to year thereafter, unless, at least 30 days prior to the anniversary date of the agreement, either party notified the other, in writing, of intention to change or terminate the agreement. On September 13, 1943, the contracting unions jointly advised the Company that they desired to negotiate changes in the existing contract. On September 21, 1943, the Company and the contracting union executed a new contract for an additional 1-year period, to be effective as of November 1, 1943. The Company and the contracting unions contend that both the 1942 and 1943 contracts bar this proceeding. Since the contracting unions themselves, by their written notice to the Company, terminated the 1943 contract, and the CIO notified the Company of its claim more than 30 days before its anniversary date, the 1942 contract is clearly no bar to a present investigation and determination of representatives. Likewise, the 1943 contract is not a bar, as it was executed after the Company had knowledge of the claim of the CIO.

Statements of a Field Examiner for the Board, introduced into evidence at the hearing, indicate that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.³

² Also named as a party to the contract was Warehouse Employees Union, Local No. 570, which has not sought to intervene.

³ The Field Examiner reported that the CIO submitted 362 application for membership cards bearing apparently genuine original signatures of persons listed on the Company's pay roll of October 25, 1943, which contained the names of 771 employees in the appropriate unit. The Intervenors rely upon their contract to establish their 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

The CIO contends that all production and maintenance employees, including leadmen, inspectors, storeroom employees, shipping and receiving employees, tin plate department employees, and timekeepers, but excluding guards, supervisory, and office clerical employees, constitute an appropriate bargaining unit. The intervenors contend that there should be several separate units based upon their respective trade jurisdictions. The Company expressed no preference other than to indicate that it hoped that the past practice of negotiating one contract to cover all the Company's employees will be continued.

The parties are in substantial agreement as to the inclusion and exclusion of the categories of employees specified in the description of the unit requested by the CIO. The only issue, therefore, is whether the single unit urged by the CIO is appropriate.

In May 1940, a petition for investigation and certification was filed by the "Baltimore Metal Trades Council of the American Federation of Labor," alleging that it represented a majority of the Company's employees in a unit of "all employees, excepting supervisory and clerical (office)." Shortly thereafter, a consent election agreement was executed by the Company and the "Baltimore Metal Trades Council of the American Federation of Labor representing:

- Local 355 of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers
- Local 21102 of Warehouse Employees Union
- Lodges 186 and 1302 of International Association of Machinists
- Locals 272 and 272-A of International Union of Operating Engineers
- Local 18 of Amalgamated Lithographers of America hereinafter called the Union."

This agreement contained a clause in which the signatory unions, i. e., the locals specified above, agreed that if the Metal Trades Council lost the election, they would not petition for elections for their crafts. The election was conducted and resulted in a victory for the Metal Trades Council. The ballot designated the union seeking to be elected only as the Metal Trades Council and made no mention of the various locals. On August 22, 1940, following bargaining negotiations, the Company entered into a contract with: "the following named labor Unions affiliated with the American Federation of Labor, hereinafter known as the 'Union.'" The locals referred to in the consent election

agreement are then listed.⁴ Contracts have been negotiated annually since that time, naming the same parties on each occasion. The evidence indicates that the unions agreed upon certain specific divisions of jurisdiction.⁵ However, bargaining negotiations with the Company each year have been conducted jointly by the business representatives of the locals. Each year, a single contract has resulted, each business representative signing on behalf of the local or locals represented by him. Wage increases have always been plant-wide. In sum, the Company has for several years bargained with an association of locals representing a unit described by that association as all of the Company's production and maintenance employees. Clearly this has been industrial and not craft bargaining.⁶

In addition to the above-described history of bargaining, the evidence reveals that since the conversion of the plant for war production, employees have been interchanged between departments and transferred from jobs falling within the jurisdiction of one AFL local, to jobs falling within the jurisdiction of another.

We are of the opinion, in view of the foregoing circumstances, that a single production and maintenance unit, as urged by the CIO, is appropriate for the purposes of collective bargaining.

In conformity with the foregoing conclusions and the agreement of the parties with respect to the categories of employees to be included in the unit, we find that all production and maintenance employees of the Company at its Baltimore plant, including leadmen, inspectors, storeroom employees, shipping and receiving employees, tin plate department employees, and timekeepers, but excluding guards, office clerical employees, and any supervisory employees who have authority to hire, promote, discipline, discharge, 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.

⁴ The Warehouse Employees Union local number was changed from 21102 to 570, presumably at the time when that Union affiliated with the Teamsters.

⁵ Jurisdiction was divided as follows :

1. IAM Lodge 186, a city-wide Local, had jurisdiction over all skilled machinists, tool and die makers, apprentices, and helpers ;
2. IAM Lodge 1302 had jurisdiction over virtually all of the remaining production employees, both semi-skilled and unskilled.
3. Operating Engineers' Local 272, a city-wide Local, had jurisdiction over the licensed stationary engineers.
4. Operating Engineers Local 272-A had jurisdiction over all maintenance employees, including oilers, firemen, coal passers, electricians, carpenters, welders, painters, and other skilled tradesmen and common laborers
5. The Lithographers Local had jurisdiction over artists, engravers, pressmen, and other skilled employees in the lithographing and coating department.
6. The Teamsters had jurisdiction over truck drivers.
7. The Warehouse Employees had jurisdiction over warehandlers

⁶ *Matter of American Radiator & Standard Sanitary Corporation*, 35 N. L. R. B. 172.

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.

The intervening unions did not indicate how they wished to appear on the ballot in the event that an industrial unit was found appropriate. We shall direct that they be jointly designated on the ballot under the title "American Federation of Labor."

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 Owens-Illinois Can Company, Baltimore, Maryland, 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 Fifth 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 United Steelworkers of America, District #8, affiliated with the Congress of Industrial Organizations, or by American Federation of Labor, for the purposes of collective bargaining, or by neither.