In the Matter of CORNING GLASS WORKS, CHARLEROI DIVISION [1] *and* FEDERATION OF GLASS, CERAMIC AND SILICA SAND WORKERS OF AMERICA

*Case No. 6–R–801.—Decided January 27, 1944*

*Mr. W. G. Stuart Sherman*, for the Board.

*Reed, Smith, Shaw & McClay*, by *Mr. Nicholas Unkovic* and *Mr. William Armour*, of Pittsburgh, Pa., and *Messrs. A. W. Weber, Paul Ohliger*, and *Harry McLaughlin*, for the Company.

*Holmes, Lewis & Menendez*, by *Mr. W. T. Lewis*, of Columbus, Ohio, *Messrs. Ralph T. Reiser* and *Willard Pelican*, of Charleroi, Pa., and *Mr. Harry Winn*, of Fayette, Pa., for the C. I. O.

*Mulholland, Robie & McEwen*, by *Mr. Richard R. Lyman*, of Toledo, Ohio, and *Mr. Harry H. Cook*, of Toledo, Ohio, for the A. F. L.

*Mr. Bernard Cushman*, of counsel to the Board.

## DECISION
AND
## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon a petition duly filed by Federation of Glass, Ceramic and Silica Sand Workers of America, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Corning Glass Company, Charleroi Division, Charleroi, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Howard Myers, Trial Examiner. Said hearing was held at Pittsburgh, Pennsylvania, on December 7, 1943. At the commencement of the hearing the Trial Examiner granted a motion of American Flint Glass Workers' Union of North America, affiliated with the American Federation of Labor, herein called the A. F. L., to intervene. The Company, the C. I. O., and the A. F. L. appeared and par-

[1] It was stipulated by the parties at the hearing that the correct name of the Company involved in this proceeding was Corning Glass Works, Charleroi Division. The caption and the name of the Company as used in this decision read accordingly.

ticipated at the hearing, and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The rulings of the Trial Examiner made at the hearing are free from prejudicial error, and are hereby affirmed. At the close of the hearing, counsel for the Company and counsel for the A. F. L. moved to dismiss the petition, and decision thereon was reserved for the Board. For reasons appearing below, the motions are denied. By motion dated December 16, 1943, the Company moved that certain corrections be made in the transcript of testimony in these proceedings. That motion was concurred in by counsel for the C. I. O. Appropriate notice of the filing of this motion was given to all parties, and no objection was made to the aforesaid motion. It is hereby granted. Following the hearing, the Company, the A. F. L., and the C. I. O. filed briefs which the Board has considered. A motion made by the Company and dated December 28, 1943, was filed with the Board for the granting of oral argument in this case. The briefs filed with the Board appear adequately to discuss the issues. The motion is denied.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

The Company is a corporation organized under the laws of the State of New York and maintains its principal office at Corning, New York. The Company operates factories located at Charleroi, Pennsylvania, Corning, New York, Central Falls, Rhode Island, and Wellsboro, Pennsylvania, where it is engaged in the manufacture and sale of a variety of glass products. Prior to December 24, 1936, the Charleroi, Pennsylvania, plant was owned and operated by the Macbeth Evans Glass Company, a Pennsylvania corporation. Since December 24, 1936, the Charleroi plant has been operated under the name of Corning Glass Works, Macbeth Evans Division. Recently it has operated under the name of Corning Glass Works, Charleroi Division. The raw materials used at the Company's Charleroi, Pennsylvania, plant consist chiefly of soda ash, limestone, felspar, aluminum, zinc and lead oxide, and sand. The value of the raw materials and supplies purchased from sources outside the Commonwealth of Pennsylvania during the current year was in excess of $100,000. The value of the principal glass products of the Charleroi plant sold and shipped during the current year was in excess of $1,000,000, of which at least 50 percent was sold and shipped to points outside the Commonwealth of Pennsylvania. The transportation of the aforesaid raw materials and finished products is by railroad and truck lines.

The Company employs an approximate total of 1,850 employees at its Charleroi plant.

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

Federation of Glass, Ceramic and Silica Sand Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

American Flint Glass Workers' Union of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On June 27, 1941, a run-off election, pursuant to a consent election agreement among the parties herein, was conducted under the auspices of the Board, Case No. 6–R–247. Both the A. F. L. and the C. I. O. participated in that election. The A. F. L. was certified by the Regional Director of the Board as the recipient of a majority of the votes cast in that election. On September 19, 1941, the A. F. L. and the Company entered into a written agreement. This agreement, by its terms, was to remain in effect until the first Monday of September 1942 "and thereafter for so long as regular negotiations for the making of a new contract shall continue." It also provided for a union shop and a check-off of dues upon the signing of individual check-off authorizations by employees. On November 27, 1942, the A. F. L. and the Company executed a new written agreement. This contract, according to its provisions, was to remain in effect for the period from September 7, 1942, until the first Monday in September 1943 "and thereafter for so long as regular negotiations for the making of a new contract shall continue." It contained a union shop provision and a check-off provision identical with that contained in the agreement entered into on September 19, 1941. The 1942–1943 agreement further provided for a wage increase of 5 cents an hour for male employees and 4 cents an hour for female employees,[2] subject to the approval of the National War Labor Board, hereinafter referred to as N. W. L. B. On January 18, 1943, the Company and the A. F. L. jointly petitioned the N. W. L. B. for approval of the aforesaid wage increase. On July 8, 1943, N. W. L. B. issued an interim order, approving, *inter alia*, a 3-cent per hour increase and referring the question of any additional wage increase to the Third

[2] Certain skilled employees, skilled glass workers, moulders, and machinists were not included as beneficiaries of the increase.

Regional War Labor Board at Philadelphia "for action in the light of brackets of sound and tested going rates."

On August 7, 1943, a letter purporting to be signed by the Executive Council of the A. F. L. was sent to the Company stating that it was the desire of the employees that the 1942–1943 contract expiring on September 7, 1943, be cancelled as of that date and protesting the signing of any more contracts with the A. F. L. The employees at the Charleroi plant had been organized into seven locals. The Executive Council was composed of representatives of Locals 591, 592, 593, 594, and 608. The membership of these locals comprised miscellaneous unskilled employees; the remaining two locals, 68 and 150, were composed of skilled employees. Since September 1941, the Company has from time to time entered into separate written agreements with the various A. F. L. locals supplementing the 1941 and 1942–1943 contracts. On August 11, 1943, Harry H. Cook, international president of the A. F. L., sent a telegram to the Company repudiating the action of the Executive Council as unauthorized and warning the Company not to deal with the Council. On August 17, 1943, the Third Regional War Labor Board issued an order granting a 2-cent per hour increase to certain night shift workers but denying any further wage increases. On August 18, 1943, the A. F. L. requested reconsideration of this order. The request for reconsideration was still pending at the time of the hearing. On August 19, 1943, the C. I. O. by letter to the Company requested recognition as exclusive bargaining representative of the employees at the Charleroi plant. On August 26, 1943, the C. I. O. filed the pending petition with the Board. On September 4, 1943, negotiations for a new contract were begun by the A. F. L. and the Company. On September 7, 1943, the Company by letter refused recognition to the C. I. O. On October 15, 1943, the Company and the A. F. L. had a bargaining conference. At this conference, all the provisions of a new contract, with the exception of that of wages, were agreed upon and reduced to writing. However, an impasse was reached on wages. No bargaining conferences have been held since that date and no contract has been signed.[3]

The A. F. L. and the Company contend that the proceedings now pending before the N. W. L. B. constitute a bar to the Direction of Election at this time.[4] The A. F. L. argues in support of its conten-

[3] Subsequent to the assertion of the petitioner's claim, separate written agreements have been reached and signed with some of the locals. One of these relates to wages The new agreements in some instances are referred to as supplements to the 1942–1943 agreement. Since these agreements were executed subsequent to the assertion of the claim of majority representation by the petitioner, such agreements cannot, as we have frequently held, operate as a bar to the petitioner's claim. *Matter of Drewrys Limited U. S. A., Inc.*, 44 N. L. R. B. 1119.

[4] The A. F. L. does not contend that the 1942–1943 contract constitutes a bar, but moved to dismiss, however, on the grounds stated in the text.

tion that by reason of its use of the governmental machinery of the N. W. L. B. and the delay involved in that procedure, the full benefits of the 1942–1943 contract have not been enjoyed by the A. F. L. The A. F. L. states further that to order an election at the present time might nullify the proceedings before the N. W. L. B. and unjustly penalize the A. F. L. for resort to such proceedings. The contentions are without merit. The A. F. L. has been the representative of the employees since June 27, 1941. It has been recognized as the bargaining agent for the 1941–1942 contract and the 1942–1943 contract. Under these circumstances, the mere fact that a governmental procedure has been utilized is insufficient to bar a new determination of representatives.[5]

The Company contends, in substance, that the language in the 1942–1943 contract to the effect that the 1942–1943 contract continued in effect so long as negotiations for a new contract continue requires a holding that the 1942–1943 contract has never terminated and is impliedly a bar to an election. The petitioner's claim was timely. It was asserted prior to the termination date of the contract. That the parties can by inserting such a provision and continuing negotiations indefinitely prevent a new determination of representatives is not consistent with the Board's recognized policy to hold contracts not a bar in just such situations.[6]

A statement of the Regional Director, introduced into evidence at the hearing indicates that the C. I. O. represents a substantial number of employees.[7]

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[5] *Matter of MacClatchie Manufacturing Company*, 53 N. L. R. B. 1268; *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928. The Company and the A. F. L. argue that the instant case falls within our decisions in the *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593; *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Matter of Kennecott Copper Corporation, Nevada Mines Branch*, 51 N. L. R. B. 1140. Those cases are clearly distinguishable. There the submission of the disputes took place relatively soon after certification, with the result that the recognized or certified bargaining representative had had no real opportunity to enjoy the benefits of exclusive representation.

[6] *Matter of Long-Bell Lumber Company*, 44 N. L. R. B. 1187.

[7] The C. I. O. submitted to the Regional Director 935 application for membership cards, of which 921 bore apparently genuine original signatures. Eight hundred and twelve of the 921 apparently genuine original signatures were the names of persons on the pay roll of the Company of October 23, 1943, containing the names of approximately 1,500 employees in the unit alleged to be appropriate. The application for membership cards submitted were dated as follows:

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| January 1943 | 1 |
| June 1943 | 5 |
| August 1943 | 167 |
| September 1943 | 5 |
| October 1943 | 61 |
| Undated | 696 |
| Total | 935 |

Both the Company and the A. F. L. objected to the admission in evidence of the statement of the Regional Director concerning claims of authorization by the C. I. O. and containing the information upon which the aforesaid statements are based. The A. F. L. objected to

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 parties are in agreement with respect to the composition of the appropriate unit. We find, substantially in accordance with the stipulation of the parties, that all production and maintenance employees, including checkers, shippers, and watchmen, but excluding office employees, militarized guards, and all supervisory employees with the 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.[8]

### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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 Corning Glass

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the failure of the Trial Examiner to allow inspection by the A. F. L. of the application for membership cards submitted by the C. I. O. to the Regional Director. We have repeatedly indicated the invalidity of such objections. *Matter of Amos Thompson Corporation*, 49 N. L. R. B. 423.

It is contended by the A. F. L. and the Company that the undated 696 designations of the C. I. O. should not be counted. It is further contended that if such contention is correct the C. I. O. has failed to make a substantial showing. These contentions are without merit. In *Matter of Frigidaire Division, General Motors Corporation*, 54 N. L. R. B. 55, we said:

> While designations bearing current dates are preferable, we have consistently accepted as a part of the representation showing undated cards that appear to bear genuine signatures. We perceive no reason for adopting a stricter rule, since the Statement Concerning Claims of Authorization for Purposes of Representation is merely a part of the administrative investigation conducted in order to determine whether or not there is sufficient evidence upon which to entertain a petition. This is an administrative matter, wholly within the discretion of the Board, and for this reason is not subject to attack by the parties to the proceeding. See *Matter of Hill Stores, Inc.*, 39 N. L. R. B. 874. Accordingly, the contentions of the Company are without merit.

[8] This is substantially the same unit embraced in previous contracts between the A. F. L. and the Company.

Works, Charleroi Division, Charleroi, Pennsylvania, 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 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 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 Federation of Glass, Ceramic and Silica Sand Workers of America, C. I. O., or by American Flint Glass Workers' Union of North America, affiliated with the A. F. of L., for the purposes of collective bargaining, or by neither.