

In the Matter of BALL BROTHERS COMPANY and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ON BEHALF OF THE SCHRAM CITY GLASS WORKERS UNION, CIO

In the Matter of BALL BROTHERS COMPANY and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ON BEHALF OF THE SCHRAM CITY GLASS WORKERS UNION, CIO

*Cases Nos. 14-R-785 and 14-R-818, respectively.—Decided February 18, 1944*

*Messrs. Myron H. Gray and A. M. Bracken, both of Muncie, Ind., for the Company.*

*Mr. Joseph Verdu, of East St. Louis, Ill., and Mr. Angelo Verdu, for the CIO.*

*Mr. Anthony W. Daly, of Alton, Ill., and Mr. Lee W. Minton, of Philadelphia, Pa., for the GBBA.*

*Mr. William Feldesman, of counsel to the Board.*

## DECISION

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

Upon an amended petition and an original petition separately and duly filed by International Union of Mine, Mill and Smelter Workers, on behalf of the Schram City Glass Workers Union, CIO, herein called the CIO, each alleging that a question affecting commerce had arisen concerning the representation of employees of Ball Brothers Company, Hillsboro, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before David Karasick, Trial Examiner. Said hearing was held at Hillsboro, Illinois, on December 2, 1943, and at St. Louis, Missouri, on December 4, 1943. The Company, the CIO, and Glass Bottle Blowers Association of the United States and Canada, AFL, and its Locals, Nos. 217 and 218, herein collectively called the GBBA, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and

to introduce evidence bearing on the issues.<sup>1</sup> Although American Flint Glass Workers' Union of North America, AFL, herein called the FGW, was not represented at the hearing, it sent a telegram to the Regional Director in which it asserted an interest in the proceeding by reason of its contract with the Company covering mold makers. This contract is discussed below. In the course of the hearing, counsel for the Company moved "to dismiss this Representation case until the 'C' cases are disposed of." The motion is 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. Inasmuch as the Company and the GBBA have filed briefs which adequately discuss the issues, the Company's request for oral argument is denied.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Ball Brothers Company is engaged in the manufacture of glass products, corrugated straw paper, rolled zinc, and rubber products. It maintains factories at Muncie, Indiana, Eaton, Indiana, Noblesville, Indiana, Okmulgee, Oklahoma, Huntington, West Virginia, and Hillsboro, Illinois. Only the recently reconditioned Hillsboro, Illinois, factory, herein called the Hillsboro plant, is involved in this proceeding. Production operations were started at this plant sometime in early September 1943, and it first produced finished ware on September 20, 1943. It is engaged in the manufacture of glass containers. From September 1, 1943, to October 8, 1943, the Company purchased for use at the Hillsboro plant raw materials valued in excess of \$40,000, of which approximately 50 percent was shipped to this plant from points outside the State of Illinois. During the same period the Company sold products finished at the Hillsboro plant in an amount exceeding \$20,000, of which more than 50 percent was shipped from said plant 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

International Union of Mine, Mill and Smelter Workers, affiliated with the Congress of Industrial Organizations, and its Local, Schram

---

<sup>1</sup> International Brotherhood of Electrical Workers, herein called the IBEW, United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, all affiliated with the American Federation of Labor, were duly served with notice of the consolidated hearing. During the early stages of the hearing, the IBEW withdrew from the proceeding, disclaiming any interest therein. At the same time the Carpenters also withdrew. The Teamsters failed to appear.

City Glass Workers Union, are labor organizations admitting to membership employees of the Company.

Glass Bottle Blowers Association of the United States and Canada, affiliated with the American Federation of Labor, and its Locals, Nos. 217 and 218, are labor organizations 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 QUESTIONS CONCERNING REPRESENTATION

By letter dated September 14, 1943, the CIO requested recognition from the Company as the exclusive collective bargaining representative of all the production and maintenance employees engaged at the Hillsboro plant. On September 17, 1943, the superintendent of the Hillsboro plant informed a representative of the CIO that he had no authority to entertain the request for recognition and referred the representative to the Company's Muncie office.

In the month of September 1942, the Company and other manufacturers in the glass container industry, as an employer group, entered into a contract with the FGW which covered mold makers. According to its written terms, the contract expired August 31, 1943. The Company urges that the contract is still operative because of an understanding of the contracting parties that it was to remain effective until the making of a new agreement. Since the parties did not express their understanding in writing, however, the contract is not a bar to the present proceeding.<sup>2</sup>

On September 4, 1943, the Company, in writing, agreed to recognize the GBBA as the representative of its members among the "miscellaneous employees"<sup>3</sup> of the Hillsboro plant. Thereafter, the Company extended recognition to the GBBA as the exclusive collective bargaining representative of all Hillsboro plant miscellaneous employees in an agreement dated September 14, 1943, which failed to embody terms and conditions of employment. A complete contract affecting these employees was executed by the Company and the GBBA on September 24, 1943. All three instruments are claimed by the Company and the GBBA to bar a present determination of representatives. An agreement which accords recognition to a labor organization as the representative of its members does not operate as

<sup>2</sup> *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035. Even if this understanding were in writing, the contract would be for an indefinite term and therefore not a bar. *Matter of General Electric Company*, 48 N. L. R. B. 1044.

<sup>3</sup> In general terms, all production and maintenance employees, other than machine operators, machine tenders (upkeep men), and machine operator apprentices.

a bar,<sup>4</sup> nor does one merely providing for the recognition of a union as an exclusive collective bargaining representative.<sup>5</sup> Consequently, the instruments of September 4 and 14 do not serve to preclude a present determination of representatives. Moreover, the final contract of September 24 is not a bar, for it was executed after the Company had been apprised of the CIO's claim.<sup>6</sup>

Anticipating the commencement of production operations at the Hillsboro plant, in the summer of 1943 the Company recruited a number of men and trained them at its Muncie plant as machine operator apprentices under an arrangement which called for their subsequent assignment to the Hillsboro plant. Consistent with an annual practice inaugurated in 1937, on August 4, 1943, the Company and other glass container manufacturers bound themselves to a single contract with the GBBA covering machine operators, machine tenders, and machine operator apprentices. While negotiations for this contract were in progress, a GBBA official advised representatives of the Company that the GBBA intended to lay claim to the Hillsboro plant employees in the classifications embraced by the contract. In September 1943 production operations were started at the Hillsboro plant for the first time since 1935, and it was then that machine operators, machine tenders, and machine operator apprentices, workers performing functions relating to production, were employed there. It is contended by the Company and the GBBA that the contract of August 4 is a bar to this proceeding. However, we note that when the contract was made production operations had not been started at the Hillsboro plant and no machine operators, machine tenders, or machine operator apprentices were employed there. We regard these facts as determinative of the issue and conclude that the August 4 contract is not a bar.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in each of the units hereinafter found appropriate.<sup>7</sup>

We find that questions affecting commerce have 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.

<sup>4</sup> *Matter of Pressed Steel Car Company, Inc.*, 46 N. L. R. B. 262.

<sup>5</sup> *Matter of Henry Weiss Manufacturing Company, Incorporated*, 49 N. L. R. B. 511.

<sup>6</sup> *Matter of Charlton Company, Inc.*, 45 N. L. R. B. 772.

<sup>7</sup> With respect to Case No. 14-R-785 involving the Hillsboro plant miscellaneous employees, the Regional Director reported that the CIO submitted 75 and the GBBA 101 application for membership cards bearing apparently genuine original signatures of persons listed on the Company's pay roll for the week ending September 25, 1943, containing the names of 138 employees in the unit alleged to be appropriate in the amended petition. Concerning Case No. 14-R-818 dealing with the Hillsboro plant machine operators, machine tenders, and machine operator apprentices, the Regional Director reported that the CIO submitted 6 application for membership cards, and the GBBA 1 such card, bearing apparently genuine original signatures of persons listed on the above-mentioned pay roll, containing the names of 17 employees in the unit alleged to be appropriate in the original petition.

## IV. THE APPROPRIATE UNITS

Subject to the Company's contention that two separate units are appropriate provided one labor organization is the representative of the employees in both, all parties stipulated that, with agreed exclusions, the machine operators, machine tenders, and machine operator apprentices of the Hillsboro plant constitute one appropriate unit, and, except for disputes concerning the inclusion of two classifications of employees, the miscellaneous employees of the Hillsboro plant comprise another. Since 1937 the GBBA has negotiated contracts on the basis of such units with numerous employers in the glass container industry, including the Company. To determine that such established units are inappropriate solely because different collective bargaining representatives may be designated by the two groups of workers is tantamount to defeating the rights guaranteed these employees under Section 7 of the Act.<sup>8</sup> Accordingly, we consider the Company's contention to be without merit.

In substantial accordance with the stipulation of the parties, we find that all machine operators, machine tenders, and machine operator apprentices employed by the Company at its Hillsboro plant, excluding office and clerical employees, construction employees, foremen, assistant foremen, 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.

As noted above, the parties are in agreement in respect to the composition of the unit of Hillsboro plant miscellaneous employees, with two exceptions. The CIO desires the inclusion of the three watchmen and one mold maker engaged at the Hillsboro plant. On the other hand, the Company asks that they be excluded. The GBBA requests the exclusion of the mold maker and the inclusion of the watchmen; in the event, however, that the watchmen are deputized by the Deputy Sheriff of Montgomery County, Illinois, the GBBA demands their exclusion.

Each of the watchmen works a shift of 8 hours. All are paid 5 cents an hour less than the average production or maintenance employee. Their duties are to protect the property of the Company and they are responsible to the plant superintendent. They carry no arms. It is the Company's intention to have them sworn as deputies by the Deputy Sheriff of Montgomery County, Illinois. However, since they are not and will not be militarized, they will be included.

<sup>8</sup> See *Matter of Ball Brothers Company*, 52 N. L. R. B. 775.

The mold maker is a skilled employee engaged in the machine shop. His work is supervised by the shift foreman of the machine operators. His duties require him to repair and maintain mold equipment for the glass forming machines. He receives in excess of \$1.05 an hour while the average production or maintenance worker encompassed by the unit of miscellaneous employees receives 55 cents an hour. It is apparent that the mold maker's skill and larger earnings place him in a category different from that of the production and maintenance employees. We shall therefore exclude him.

We find, in substantial agreement with the stipulation of the parties and our determinations relating to the watchmen and mold maker, that all employees engaged by the Company at its Hillsboro plant, including raw material loaders, straw bosses, batch mixers, powerhouse engineers, powerhouse firemen, gas makers, ashmen, cranemen, blacksmiths, mold cleaners, furnace men, cullet wheelers, oilers, Lehr tenders, women sorters, box-room department employees, boxmakers, paper unloaders, jar cappers, lid sorters, jar loaders, truck drivers, storeroom employees, janitors, machinists, spot inspectors, plumbers, carpenters, electricians, sweepers, and watchmen, excluding machine operators, machine tenders, machine operator apprentices, office and clerical employees, construction employees, mold makers, foremen, assistant foremen, 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

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in each of the two appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

The CIO asks to be designated as "International Union of Mine, Mill & Smelter Workers, for itself and on behalf of Schram City Glass Workers No. 678, CIO" on the ballot in each election. While we have previously granted similar requests, it appears upon further consideration that a certification in such terms might be ambiguous. The request is accordingly denied, and we shall designate the CIO on the ballot in each election as "International Union of Mine, Mill & Smelter Workers, Schram City Glass Workers No. 678, CIO." The GBBA's request to be designated as "Glass Bottle Blowers Association of the United States and Canada, affiliated with the American Federa-

tion of Labor, Local 217" on the ballot in the election directed among the employees in the appropriate unit of Hillsboro plant machine operators, machine tenders, and machine operator apprentices, and its request to be designated as "Glass Bottle Blowers Association of the United States and Canada, affiliated with the American Federation of Labor, Local 218" on the ballot in the election directed among the employees in the appropriate unit of Hillsboro plant miscellaneous employees are hereby granted.

### 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Ball Brothers Company, Hillsboro, Illinois, 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 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 two units 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 elections, to determine: (1) whether the employees in the Hillsboro plant machine operators, machine tenders, and machine operator apprentices unit described in Section IV, above, desire to be represented by International Union of Mine, Mill & Smelter Workers, Schram City Glass Workers No. 678, CIO, or by Glass Bottle Blowers Association of the United States and Canada, affiliated with the American Federation of Labor, Local 217, for the purposes of collective bargaining, or by neither; and (2) whether the employees in the Hillsboro plant miscellaneous employees unit described in Section IV, above, desire to be represented by International Union of Mine, Mill & Smelter Workers, Schram City Glass Workers No. 678, CIO, or by Glass Bottle Blowers Association of the United States and Canada, affiliated with the American Federation of Labor, Local 218, for the purposes of collective bargaining, or by neither.