

In the Matter of **PLOMB TOOL COMPANY** and **INTERNATIONAL DIE SINKERS CONFERENCE**, LOS ANGELES LOCAL #220, INDEPENDENT

Case No. 21-R-2234.—Decided April 27, 1944

Messrs. W. B. Carman and Walter Saint, both of Los Angeles, Calif., for the Company.

Mr. F. R. Doyle, of Pasadena, Calif., for the Die Sinkers.

Mr. Nelson Taylor, of Los Angeles, Calif., for the Council.

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 Die Sinkers Conference, Los Angeles Local #220, Independent, herein called the Die Sinkers, alleging that a question affecting commerce had arisen concerning the representation of employees of Plomb Tool Company, Los Angeles, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Los Angeles, California, on March 24, 1944. The Company, the Die Sinkers, and Los Angeles Metal Trades Council, A. F. L., herein called the Council, 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

Plomb Tool Company, a California corporation, is engaged in the manufacture of tools of various types. During the year 1943, the Company purchased materials valued at approximately \$150,000, of
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which about \$80,000 represents purchases made from points outside the State of California. During the same period, the Company made total sales valued in excess of \$5,000,000, of which approximately \$4,000,000 represents the value of products shipped to points located outside the State of California. The Company's products are made for both the United States Army and Navy and, in addition, for approximately 1,200 distributors.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Die Sinkers Conference, Los Angeles Local #220, Independent, is an unaffiliated labor organization, admitting to membership employees of the Company.

Los Angeles Metal Trades Council is a combination of labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about November 5, 1943, the Die Sinkers requested recognition from the Company as the representative of certain of its employees, and repeated its request by letter dated December 10, 1943. The Company replied to the latter request by letter dated December 14, 1943, in which it stated that it had an agreement with the Council, and that it believed that the employees in the unit sought by the Die Sinkers were included within the scope of the agreement. In this letter the Company expressed a willingness to negotiate with the Die Sinkers if that organization and the Council could agree that the employees sought by the Die Sinkers were not claimed as part of the unit represented by the Council; the Company also asserted in its letter that in the absence of such an agreement, it would require a certification by the Board before entering upon negotiations with the Die Sinkers.

On December 11, 1940, the Company and the Council executed a collective bargaining agreement covering employees of the Company. The agreement provides for its automatic renewal from year to year in the absence of notice by either signatory to the other of an intent to change, modify, or terminate it given at least 30 days prior to December 31, its anniversary date. It was renewed in 1941, and again in 1942. In view of the fact that the Die Sinkers first gave notice to the Company of its claim to representation on November 5, 1943, more than 30 days before December 31, 1943, we find that the agreement between the Company and the Council does not constitute a bar to a present determination of representatives.

A statement of the Board's Field Examiner introduced into evidence at the hearing, indicates that the Die Sinkers represents a substantial number of employees in the unit which it seeks.¹

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 DETERMINATION OF REPRESENTATIVES

The Die Sinkers seeks a unit composed of all employees in the die room of the Company working on dies or parts of dies, excluding foremen, and all other employees. The Council contends that these employees are properly part of the industrial unit currently represented by it. The Company takes no position with respect to the unit.

The record discloses that although the Company has recognized the Council as the collective bargaining representative of its employees, for the past 2 years none of the employees in the unit sought by the Die Sinkers paid dues to the Council, nor did the Council present grievances in their behalf. Moreover, evidence was introduced which indicates that for the past 3 years these employees presented their own grievances to the Company through representatives not associated with the Council. The record further discloses that the contract between the Company and the Council contains wage schedules covering machinists, metal polishers, and blacksmiths, but none covering die sinkers. It is true that a literal interpretation of this contract permits of no concrete finding that die sinkers were not meant to be covered by its terms. However, we have often held that prior collective bargaining agreements nominally covering craft employees in an industrial unit do not necessarily foreclose the claim of a clearly defined and historically recognized craft group to subsequent separate craft recognition where, as here, the craft group preserves its separate craft identity through the plant-wide agreements, fails to acquiesce in the industrial form of bargaining, and insists upon distinct recognition.²

We have frequently found that employees similar to those involved herein may properly constitute either a separate craft unit or form

¹ The Field Examiner reported that the Die Sinkers submitted 12 designations which were checked against the Company's pay roll of January 10, 1944, and that there were 21 employees in the unit proposed by the Die Sinkers. He further reported that the Council submitted no evidence of representation. However, the record indicates that the Council relies upon its contract of December 11, 1940, as subsequently renewed, for the establishment of its interest in this proceeding.

² *Matter of Bendix Aviation Corporation*, 39 N. L. R. B. 81; *Matter of Aluminum Co. of America*, 42 N. L. R. B. 772; *Matter of Federal Telephone and Radio Corporation*, 49 N. L. R. B. 430; *Matter of Goodyear Tire & Rubber Company*, 53 N. L. R. B. 875.

part of an industrial unit, and under such circumstances our determination of the unit issue rested, in part, upon the desires of the employees themselves.³ Accordingly, before making a final determination in this proceeding as to the propriety of the unit proposed by the Die Sinkers, we shall first ascertain the desires of the employees it seeks to represent. We shall direct an election by secret ballot to be conducted among all employees in the die room of the Company working on dies or parts of dies, excluding the 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, and all other employees, 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, to determine whether they desire to be represented by the Die Sinkers or by the Council. Upon the results of the election will depend, in part, our determination of the appropriate unit. If the employees in this voting group select the Die Sinkers as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, these employees choose the Council, they will have thereby indicated their desire to be part of the industrial unit currently represented by it, and they will be deemed to be part of said unit.

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 Plomb Tool Company, Los Angeles, California, 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 Twenty-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 all employees in the die room of the Company working on dies or parts of dies, excluding foremen, all other supervisory employees with authority to hire, promote, discharge, discipline,

³ *Matter of Indianapolis Drop Forging Company*, 40 N. L. R. B. 1294; *Matter of International Harvester Company*, 36 N. L. R. B., 520; *Matter of Aluminum Company of America, Canonsburg Plant*, 55 N. L. R. B. 407.

or otherwise effect changes in the status of employees, or effectively recommend such action, and all other employees of the Company, 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 Die Sinkers Conference, Los Angeles Local #220, Independent, or by Los Angeles Metal Trades Council, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.