

In the Matter of BETHLEHEM SUPPLY COMPANY and UNITED STEEL-
WORKERS OF AMERICA, LOCAL 3076 (CIO)

Case No. 16-R-844.—Decided May 11, 1944

Mr. W. M. Sanders, for the Company.

Mr. John H. Curry, for the U. S. A.

Messrs. W. F. Heickman and H. F. Downey, for the Molders.

Messrs. Ira C. Haynes and C. A. Buskel, for the I. A. M.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION

AND

DIRECTIONS OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, Local 3076 (CIO), herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem Supply Company, Tulsa, Oklahoma, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Tulsa, Oklahoma, on March 28, 1944. The Company, the U. S. A., and International Molders and Foundry Workers Union, herein called the Molders, and International Association of Machinists, Local 790, herein called the I. A. M., 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

At the close of the hearing, the I. A. M. and the Molders moved to dismiss the petition of the C. I. O. on the ground that their prior certifications by the Board and certain directive orders issued by the National War Labor Board, herein called the W. L. B., constituted a bar to the proceeding. Ruling on these motions was reserved for the Board. For the reasons stated in Section III, *infra*, the motions are hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem Supply Company, a Delaware corporation, has its principal office and place of business at Tulsa, Oklahoma. In addition to its plant at Tulsa, the Company operates a number of general supply stores throughout the State of Oklahoma and in adjoining States. Only the Tulsa plant is involved in this proceeding. There, the Company is normally engaged in the manufacture of tools, machinery, equipment, and supplies used in drilling oil and gas wells and the maintenance of such wells. During the year 1943, the Company purchased for use at its Tulsa plant raw materials and other equipment having a value in excess of \$600,000, of which approximately 50 percent was shipped to the plant from points outside the State of Oklahoma. During the same period, the Company sold finished products having a value in excess of \$750,000, of which approximately 50 percent was shipped from the Tulsa plant to points outside the State of Oklahoma.

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

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, Local 3076, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Molders and Foundry Workers Union is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Association of Machinists, Local 790, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about January 31, 1944, the U. S. A. mailed a letter to the Company in which it claimed to represent a majority of the Company's Tulsa plant employees, and requested a meeting to discuss collective bargaining relations. In a reply by telephone, the Company stated that since it already had collective bargaining relations with the Molders and the I. A. M., it could not negotiate with the U. S. A. unless and until the latter was certified by the Board.

The I. A. M. and the Molders contend that a prior certification of the former as the exclusive collective bargaining representative of certain employees of the Company, and the victory of the latter in a consent

election conducted among the employees of the Company's foundry, together with a series of directive orders issued by the W. L. B., constitute a bar to the present proceeding. To determine this issue, a brief resume of the bargaining relations between the Company and the two intervening unions is necessary.

The Company is the successor in business of the Oklahoma Iron Works, which in turn was the successor to the International Supply Company. The I. A. M. enjoyed collective bargaining relations with both the latter companies. On August 1, 1935, it executed a contract with the Oklahoma Iron Works, and on August 16, 1937, an agreement with the International Supply Company. In both instances, the employees covered were substantially the same as those later included in a unit which the Board found to be appropriate in the case of the Company on April 13, 1942.¹ This latter unit comprised all employees of the Company in its machine shop, welding shop, assembly shop, and fabricating shop, but excluded superintendents and non-working foremen. The Company had contended that the unit should comprise all its production and maintenance employees, not merely those in the four shops above. However, since no other organization sought such an over-all unit, the Board found the smaller unit to be appropriate on the basis of the extent of organization. On May 27, 1942, the I. A. M. was certified by the Board as the representative of the employees in the appropriate unit.²

On September 4, 1942, the Molders was victorious in a consent election conducted among the employees of the Company's foundry.

Both unions, immediately after recognition, entered into negotiations with the Company. An impasse was reached, and a conciliator called in. When conciliation failed, various issues were submitted by the unions to the W. L. B. On July 30, 1943, the W. L. B. issued an interim order on two issues—union security and grievance procedure. On September 16, and December 7, 1943, the Regional W. L. B. issued directive orders granting wage increases, retroactive to November 27, 1942, to the employees in the two bargaining units. A further directive order was issued on March 17, 1944, relating to the effect of incentive bonuses upon the wage increases. In the meantime, the I. A. M. and the Molders on February 10, 1944, submitted other issues to the Regional W. L. B. These issues were still pending determination at the time of the hearing in the instant proceeding. The Company has refused to enter into a contract with either the Molders or the I. A. M. until such time as all matters which have been referred to the W. L. B. have been finally determined.

¹ *Matter of Bethlehem Supply Company*, 40 N. L. R. B. 487.

² *Matter of Bethlehem Supply Company*, 41 N. L. R. B. 400.

The Board has held that a newly recognized or certified representative is entitled to a reasonable opportunity to obtain the benefits of representation, as evidenced by a collective bargaining contract, and that where delay in obtaining such a contract is caused by resort to the orderly processes of Governmental agencies the Board will not proceed with a new investigation and determination of representatives.³ We do not consider that the instant case is governed by that holding. The I. A. M. was certified about 2 years ago, and the Molders has been recognized by the Company for a period of approximately 20 months. Were we to conclude that a determination of representatives is barred at present and the I. A. M. and the Molders are each entitled to enter into a contract with the Company covering a future period, an unreasonable time will have elapsed between the date when the Company's employees last selected their bargaining representative and the date when they will be afforded an opportunity to express a new choice. Moreover, it appears that the issues upon which the I. A. M., the Molders, and the Company did not agree have been presented in piecemeal fashion to the W. L. B. over an unduly long period of time. Finally, it is clear that the Company has put into effect all the directive orders, including wage increases, which the W. L. B. has issued so far. Thus, the I. A. M. and the Molders have obtained substantial benefits for the employees whom they represent.⁴ In view of the above circumstances, we find that the prior certification, the prior consent election, and the directive orders of the W. L. B. are not a bar to a present determination of representatives.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the U. S. A. represents a substantial number of employees in the unit it alleges to be appropriate.⁵

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 U. S. A. seeks a unit of all production and maintenance employees of the Company's Tulsa plant, excluding all clerical, plant-protection, and supervisory employees; and those employed in technical positions.

³ *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

⁴ See *International Harvester Company*, 55 N. L. R. B. 497.

⁵ The Field Examiner stated that the U. S. A. submitted to him 243 application-for-membership cards, of which 198 bore names of persons whose names appeared on the Company's pay roll of February 19, 1944. There are approximately 400 employees in the unit which the U. S. A. alleges to be appropriate.

The I. A. M. relies upon its previous certification and the Molders upon its consent election victory to show their interest in the instant proceeding.

The I. A. M. and the Molders contend that the respective units in which they have been recognized by the Company as the exclusive bargaining representatives are appropriate, namely, the *I. A. M.*—all employees of the Company in its machine shop, welding shop, assembly shop, and fabricating shop, but excluding superintendents and non-working foremen; and the *Molders*—all production employees in the foundry department, excluding supervisors, foremen, and clerical employees. The Company takes no position as to the appropriate unit.

The Company's plant consists of several large buildings spread over an enclosed area of 20 acres. The entire plant is operated as a functional unit under the control of a plant manager. Below him in rank is a production manager who is also over the entire plant, and superintendents, and foremen.

The Company has approximately 400 production and maintenance employees. They are found in the following departments which are set up as separate shops under separate supervision: works general and maintenance,⁶ pattern, forge, foundry, welding, machine, assembly, and fabricating. There is little, if any, interchange of employees between shops, but if extra help is needed in any shop, the maintenance department furnishes it. The unit in which the I. A. M. was previously certified comprises the employees in the last 4 of the above departments, a total of approximately 185. The number of employees in the foundry is 125. There remain approximately 90 production and maintenance employees in 3 departments who have never chosen a bargaining representative.

The management of the Company determines the general labor policies for the entire plant, subject to approval by a parent corporation. Matters concerning wages, vacations, improvement of working conditions, and other employee personnel problems are handled uniformly throughout the plant. There is a single personnel office in charge of employment. Office and clerical work for all departments is handled by one office force.

The above facts indicate the integrated character of the management and control of the Company. There is no denial that the operations of the plant are interrelated and interdependent. In view of these considerations, it is clear that a single production and maintenance unit could be found to be appropriate for collective bargaining purposes. Nor is such a finding precluded by our previous determination that a unit of employees in only four departments was appropriate, since as indicated in Section III, *supra*, that finding was based on the then present extent of organization.

⁶ There is some confusion in the record as to whether there is a single works general and maintenance department, or a separate works general department and a separate maintenance department.

Since we have previously found the I. A. M. unit to be appropriate as a separate bargaining unit, and the foundry employees, pursuant to the results of a consent election, have functioned as a separate unit, and since we now find that the employees in both these units could be included in a single plant-wide production and maintenance unit, we shall first ascertain the desires of the employees themselves before making a final determination with respect to the appropriate unit.⁷

The I. A. M. requests the inclusion of certain maintenance machinists and toolroom employees in its unit, in the event that the Board directs elections. The Company employs four maintenance machinists or repairmen, and three toolroom employees, all of whom are in its maintenance department. In our prior decision, no reference is made to these employees. The Company has, however, treated them as not being included in the I. A. M. unit. The maintenance machinists make repairs on machinery throughout the plant, but work out of the machine shop. In their repair work, they use the machines in the machine shop. There is evidence tending to indicate that both the maintenance machinists and the toolroom employees were covered by the contracts between the I. A. M. and the two companies which were predecessors of the Company. The Company stated at the hearing that it took no position as to the voting groups in which these employees should be included. The U. S. A., however, contends that they should vote in the same group as other maintenance employees. We are of the opinion that the maintenance machinists and the toolroom employees may properly be included in the group the I. A. M. seeks to represent because the nature of their work is comparable to or related to that performed by employees at present in the I. A. M. unit. We shall, therefore, include maintenance machinists and toolroom employees in the voting group hereinafter designated for employees of the welding, machine, fabricating, and assembly departments.

We shall direct elections by secret ballot to be conducted among the employees of the Company in the following groups who were employed during the pay-roll period immediately preceding the date of our Direction of Elections, subject to the limitations and additions set forth therein: (1) all employees in the machine shop, welding shop, assembly shop, and fabricating shop, including maintenance machinists and toolroom employees in the maintenance department, but excluding superintendents, non-working 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, to determine whether they desire

⁷ See *Matter of Weyerhaeuser Timber Company, Klamath Falls Branch*, 42 N. L. R. B. 499, 504.

to be represented by the I. A. M., the U. S. A., or neither; (2) all production employees in the foundry department, excluding clerical employees, 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, to determine whether they desire to be represented by the Molders, the U. S. A., or neither; and (3) all remaining production and maintenance employees, excluding clerical employees, plant-protection employees, technical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by the U. S. A.

Upon the results of the elections will depend, in part, our determination of the appropriate unit or units of production and maintenance employees.

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 Bethlehem Supply Company, Tulsa, Oklahoma, 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 of Elections, under the direction and supervision of the Regional Director for the Sixteenth 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 following employees 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:⁸

(1) All employees in the machine shop, welding shop, assembly shop, and fabricating shop, including maintenance machinists and toolroom employees in the maintenance department, but excluding

⁸ The several unions expressed preferences at the hearing that their respective names appear on the ballots as they are set forth in the Direction of Elections.

superintendents, non-working 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, to determine whether they desire to be represented by the International Association of Machinists, Local 790, or by the United Steelworkers of America, C. I. O., Local 3076, for the purposes of collective bargaining, or by neither;

(2) All production employees in the foundry department, excluding clerical employees, 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, to determine whether they desire to be represented by the International Molders and Foundry Workers Union of America, Local 325, or by the United Steelworkers of America, C. I. O., Local 3076, for the purposes of collective bargaining, or by neither; and

(3) All production and maintenance employees, excluding clerical employees, plant-protection employees, technical employees, all employees included in groups (1) and (2) above, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by the United Steelworkers of America, C. I. O., Local 3076, for the purposes of collective bargaining.