

In the Matter of T. C. WHEATON COMPANY and FEDERATION OF GLASS,
CERAMIC & SILICA SAND WORKERS OF AMERICA, AFFILIATED WITH
THE C. I. O.

Case No. 4-R-1325.—Decided May 12, 1944

A. R. McAllister, Jr., of Bridgeton, N. J., for the Company.

Holmes, Lewis & Menendez, by *Mr. W. T. Lewis*, of Columbus,
Ohio, and *Mr. Herman Leiner*, of Columbia, Ohio, for the CIO.

Mr. Albert K. Plone, of Camden, N. J., and *Mr. Thomas Eames*,
of Philadelphia, Pa., for the GBBA.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended petition duly filed by Federation of Glass, Ceramic & Silica Sand Workers of America, affiliated with the CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of T. C. Wheaton Company, Millville, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. Said hearing was held at Millville, New Jersey, on March 22, 1944. The Company, the CIO, and Glass Bottle Blowers Association of United States and Canada, AFL, herein called the GBBA, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

T. C. Wheaton Company, a New Jersey corporation, is engaged at its plant at Millville, New Jersey, in the manufacture of glass

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containers, pressed glassware, scientific glassware, and decorative glassware. During the year 1943 the Company used slightly less than \$1,000,000 worth of raw materials, over 95 percent of which was shipped to the Millville plant from States other than the State of New Jersey. During the same year the Company sold over \$1,000,000 worth of its products, about 90 percent of which was shipped outside of the State of New Jersey.

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

II. THE ORGANIZATIONS INVOLVED

Federation of Glass, Ceramic & Silica Sand Workers of America, affiliated with the Congress of Industrial Organizations, and Glass Bottle Blowers Association of United States and Canada, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

The CIO requests a unit comprised of the male packers and sorters in the hot metal part of the Company's plant.¹ The GBBA and the Company contend that these employees are but one group of packers and sorters employed in the plant, that all packers and sorters fall into the category known in the glass industry as "miscellaneous employees" and that the only appropriate unit in which these packers and sorters can be represented is one comprised of all miscellaneous employees. The Company presently recognizes the GBBA as the exclusive bargaining representative of its miscellaneous employees, including packers and sorters, having entered into a union shop contract with the GBBA covering such employees on or about December 17, 1943.²

The CIO bases its contention that the unit it requests is appropriate on the fact that the employees therein have for a long time been recognized by the Company as an identifiable group for the purposes of collective bargaining, and on the further fact that such a unit was found by the Board to be appropriate in *Matter of Armstrong Cork Co. (Whitall-Tatum Division, Millville, New Jersey)*.²

¹ The employees whom the CIO would represent have traditionally been termed packers and sorters. They have successfully fought infiltration of female employees into their ranks at the Company's plant. The CIO contends that no employees outside this traditional group can be termed packers and sorters. The descriptive term as used herein corresponds with the CIO's interpretation thereof except where it is clear from the context that a larger group is contemplated.

² Inasmuch as this contract was entered into after the CIO had notified the Company that it claimed to represent "the packers and miscellaneous workers," neither the Company nor the GBBA asserts that it is a bar to this proceeding.

³ 28 N. L. R. B. 950; Certification, 29 N. L. R. B. 1185.

In 1889 the glass packers and sorters employed by the Company, those employed by Whitall-Tatum Company, predecessor of Armstrong Cork Company, and those employed by one or more manufacturing plants in the Millville vicinity, organized a union which was affiliated with the American Federation of Labor. In 1898 this local dropped its affiliation and continued as an unaffiliated union until August 1940. Membership in the organization, herein called the Independent, was at all times limited to packers and sorters. From the time the Independent was founded until 1940, representatives of the Independent negotiated at regular intervals with Whitall-Tatum Company and its successor, Armstrong Cork Company (both predecessor and successor companies being hereinafter referred to as Armstrong), concerning wages and working conditions of packers and sorters. These negotiations resulted during the earlier years in written contracts and more recently in annual oral contracts. The Company carried on no extensive negotiations with the Independent, but from 1926 to 1940, as each of the Independent's contracts with Armstrong was agreed upon, the Company met with a committee representing the packers and sorters in its employ⁴ and usually agreed to follow the terms of the Armstrong contract. In 1940 the Independent voted to affiliate with the Congress of Industrial Organizations. Thereafter, the Company met from time to time with representatives of its packers and sorters but did not recognize the CIO as their bargaining representative and bargained with them without reference to the Armstrong contract. In 1941 the CIO petitioned the Board for certification as representative of a unit of packers and sorters in the Armstrong plant. The Board directed self-determination elections in two separate voting groups composed of packers and sorters and other miscellaneous employees, respectively. The GBBA and the CIO appeared on both ballots. As a result of the elections, the CIO was certified as the representative of the packers and sorters, and the GBBA as the representative of all other miscellaneous employees in the Armstrong plant.⁵

In the manufacture of glass receptacles, raw materials pass from group to group and from process to process in one continuous operation. Except for the skilled workmen who actually shape the glass, all production employees participating in the manufacture of glassware are classified as miscellaneous employees. Inspecting is done by employees who pack and sort, that is, they inspect the ware, set aside the faulty pieces and pack the perfect ones. In the Armstrong plant as well as in the Wheaton plant, the group of packers and sorters which

⁴ The committee consisted of representatives of the Company's packers and sorters usually accompanied by officials of the Independent who were employees of Armstrong.

⁵ See footnote 3. *supra*.

the CIO would represent as a separate unit makes the first and, for ordinary ware, the only inspection of the glass as it comes from the lehr. Before the advent of machine-made glass the work of packers and sorters was skilled. They were required to serve an apprenticeship of 1 year before being classified as journeymen packers and sorters. Although the Company still follows the apprenticeship system regarding packers and sorters when the employees insist upon it, the evidence establishes that the year of training is unnecessary and that the work is not of a skilled nature.⁶

The Wheaton plant manufactures certain decorative glass and precision laboratory equipment of a type not made by Armstrong. The packers and sorters whom the CIO desires to represent do not pack these pieces but inspect them and send them through the plant, in the one case for decoration, in the other for more careful inspection. The girls who decorate the ware also cull and pack the finished decorative pieces. Employees termed gauge girls check the laboratory equipment for size. Most inspectors pack. The main difference between the work of the employees whom the CIO would segregate and other inspectors is in the flaws which they must detect. However, the girls who decorate the ware sometimes reject it for flaws which should have been detected by the packers and sorters. The foreman of the packers and sorters whom the CIO seeks to represent also supervises all other inspectors and packers as well as all employees engaged in the making of cartons.

We regard this case as distinguishable from the *Armstrong Cork* case upon which the petitioner relies. Our decision in that proceeding was based upon the two circumstances, that Armstrong had for a period of 51 years recognized and bargained with a labor organization representing the packers and sorters, and that there appeared to be a clear line of demarcation between the packers and sorters and other miscellaneous employees. In the instant case, although the Company has since 1926 treated its packers and sorters as a distinct group for the purposes of bargaining, its negotiations with these employees have been oral and extremely informal.⁷ Furthermore, it is evident that the Company's packers and sorters are not validly distinguishable in respect to skill or function from other miscellaneous employees whom the CIO seeks to exclude from its proposed unit.

We note, in addition, that the CIO has apparently organized miscellaneous employees of the Company other than packers and sorters.⁸

⁶ In January 1944 all packers and sorters went on strike. The Company did not have to cease operations but used employees from other departments of the plant to do the work of packers and sorters. These employees, although untrained in that specific trade, performed the work so well that no complaints have been received on the ware which they inspected.

⁷ See *Matter of Corn Products Refining Company*, 52 N. L. R. B. 1324.

⁸ In its brief, the CIO requests that if the Board should direct separate elections in two voting groups comprised respectively of the packers and sorters and the miscellaneous

In its original petition the CIO requested a unit of miscellaneous employees, including packers and sorters.⁹ Collective bargaining upon the basis of a unit of miscellaneous employees, including packers and sorters among others, is traditional and customary in the glass manufacturing industry. We are not persuaded that the circumstances present in this case afford sufficient justification for varying the normal pattern by setting apart a subsidiary and ill-defined group of miscellaneous employees. We find, therefore, that the unit sought by the CIO is inappropriate for the purposes of collective bargaining.

IV. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Since the bargaining unit sought to be established by the petitioner is not appropriate as stated in Section III, above, we find that no question concerning representation of employees of the Company in an appropriate bargaining unit has arisen within the meaning of Section 9 (c) of the Act. Accordingly, the petition will be dismissed.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of T. C. Wheaton Company, Millville, New Jersey, filed by Federation of Glass, Ceramic & Silica Sand Workers of America, affiliated with the CIO, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

employees, it be accorded a place on the ballot in both elections. This request appears to be based upon a misconception of the issues presented to us by the petition and motions herein. The CIO's petition requests a determination of representatives only as to the Company's packers and sorters. The GBBA, which is presently recognized as the exclusive representative of all the miscellaneous employees subject to our disposition of the CIO's petition, intervened only for the purpose of seeking dismissal of the petition on the ground that the unit proposed therein is inappropriate.

⁹ According to the report made by the Field Examiner and filed as an Exhibit at the hearing, the CIO submitted 47 authorization cards, of persons working as packers and sorters for the Company, and 177 authorization cards of other miscellaneous employees. The GBBA submitted 37 application-for-membership cards of persons whom it terms packers and sorters; none of persons in the CIO's alleged unit, and 452, including the 37 above-mentioned, of persons classified as miscellaneous employees.