In the Matter of MUNCIE MALLEABLE FOUNDRY COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO

Case No. 9–R–1322.—Decided May 12, 1944

Pope & Ballard, by *Mr. T. C. Kämmholz*, of Chicago, Ill., for the Company.

Mr. William E. Kent, of Anderson, Ind., for the UAW-CIO.

Mr. Stephen A. Miller, of Indianapolis, Ind., and *Messrs. Joseph A. Padway* and *Robert A. Wilson*, of Washington, D. C., for the Molders.

Mr. William C. Landmuir, of Indianapolis, Ind., for the Pattern Makers.

Mr. Irving Rogosin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, herein called the UAW-CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Muncie Malleable Foundry Company, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Muncie, Indiana, on March 3, 1944. International Molders and Foundry Workers Union of North America, A. F. of L., herein called the Molders, and Pattern Makers League of North America, A. F. of L., herein called the Pattern Makers, were served with Notice of the Hearing. The Company, the UAW-CIO, the Molders, and the Pattern Makers, appeared and participated.[1] All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence

[1] During the course of the hearing, it was agreed by and between all the parties that the patternmakers, including two additional employees in the pattern shop (See Section IV, 1, *infra*), should be excluded from the appropriate unit. The Pattern Makers thereupon withdrew from further participation in the hearing.

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

Muncie Malleable Foundry Company, a Delaware corporation, having its plant and principal office in Muncie, Indiana, is engaged in the manufacture and sale of malleable iron castings. The principal raw materials used in its plant consist of scrap iron, pig iron, coal, and coke. During the year 1943, the Company purchased raw materials aggregating in excess of $500,000 in value, 90 percent of which was obtained from points outside the State of Indiana. During the same period, the net sales of the Company aggregated in excess of $1,900,000, of which 95 percent was shipped to points outside the State of Indiana.

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

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

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

Pattern Makers League 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

By letter dated January 1, 1944, the UAW-CIO, claiming to represent a majority of employees at the Company's plant, requested the Company to recognize it as the exclusive bargaining representative of its employees. The Company made no reply for the reason, asserted by it at the hearing, that there were in existence on that date a written contract between the Company and the Molders, and an oral agreement with the Pattern Makers League, covering the patternmakers employed at its plant. The Company and the Molders contend that their contract, as extended, is a bar to this proceeding.

The Company has bargained with the Molders as representative of the molders and coremakers in its employ since 1934, and of its remaining employees since 1937. Commencing in August 1937, annual written contracts have resulted, the most recent of which, dated July 20, 1942, was for a term of 1 year from May 1, 1942. On April 30, 1943, the Company and the Molders executed a supplemental agreement providing "* * * that the existing agreement between the said parties dated July 20, 1942, and expiring May 1, 1943, shall continue in full force and effect until changed in conference between representatives of the International Molders and Foundry Workers Union of North America and Local #177, and representatives of the Muncie Malleable Foundry Company."[2]

It is clear from the language of this provision that the contract as extended was for a period of indefinite duration, although the Company argues that it was for a period of 1 year from April 30, 1943. Under either construction the contract cannot operate to bar this proceeding.[3]

As to the further argument of counsel for the Molders that the Board should, in the exercise of its discretion, refuse to conduct an election in a plant engaged wholly in the production of war materials at the present time, the Board has fully considered such a contention in *Matter of The Trailer Company of America*,[4] and rejected it. We find that the contract as extended is no bar to a present determination of representatives.

A statement of a Board agent supplemented by a statement of the Trial Examiner, introduced into evidence at the hearing, indicates that the UAW-CIO represents a substantial number of employees in the unit hereinafter found appropriate.[5]

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[2] There was a conflict in the testimony as to whether the extension agreement above referred to had been duly authorized by the membership of the Molders. The evidence tended to indicate that the extension was properly authorized However, for reasons hereinafter indicated, we find it unnecessary to resolve this conflict.

[3] *Matter of the Trailer Company of America*, 51 N. L. R. B. 1106; *Matter of Dain Manufacturing Company*, 41 N L R. B. 1056.

[4] 51 N. L R B. 1106.

[5] The Field Examiner reported that the UAW-CIO submitted 172 authorization cards which bore apparently genuine original signatures; that the names of 151 persons appearing on the cards were listed on the Company's pay roll of January 29, 1944, which contained the names of 327 employees in the appropriate unit; and that 44 cards were dated December 1943, 19 were dated January 1944, and 88 were undated The UAW-CIO submitted 8 additional cards to the Trial Examiner at the hearing. The names of 6 persons appearing on the cards represented apparently genuine original signatures and appeared on the Company's pay roll of January 29, 1944; 1 of these cards was dated February 1944 and the remaining cards were undated

The Molders, in addition to relying upon its contract, submitted a list of 297 of its members employed by the Company, certified by the Secretary of Local #177 of the Molders, together with its current ledger books. A spot-check conducted by the Trial Examiner indicated that the Molders had a current membership of 297 employees in the unit of 310 alleged by it to constitute the appropriate unit.

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 UAW-CIO originally petitioned for a unit consisting of: All production and maintenance employees of the Company employed at Muncie, Indiana, including patternmakers, watchmen, garage mechanics, and excluding superintendents, and assistant superintendents, foremen and assistant foremen, metallurgists and assistant metallurgists, office porter, office and clerical 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.

The Company, in its contract with the Molders, dated July 20, 1942, recognized the Molders as "sole collective bargaining agency for its employees of all departments," but specifically excluded, in addition to the exclusions enumerated by the UAW-CIO, patternmakers, garage mechanics, assistant garage mechanics, and salaried employees. The office porter referred to in the petition is not specifically mentioned.

1. *Patternmakers:* During the hearing, all parties agreed to exclude patternmakers from the appropriate unit. In addition to five patternmakers, the Company employs two persons, Elijah Mulke and Slyvester Doolittle, in the pattern shop. Although these two employees are not classified by the Company as patternmakers, Mulke has had sufficient experience in this department to qualify him for membership as an apprentice in the Pattern Makers. Doolittle, although a new and inexperienced employee presently engaged in the simplest type of pattern work, is doing work sufficiently related to that of the patternmakers to warrant his inclusion within that group. All the parties are agreed that Mulke and Doolittle should be excluded from the unit with the patternmakers. We see no reason for departing from the agreement of the parties with respect to these employees.

2. *The office porter:* This employee, who is over 70 years of age, and somewhat incapacitated, performs the duties of sweeping, and firing the furnace. He is paid on an hourly basis. Although his work generally falls within the scope of maintenance, all parties agree that he should be excluded from the unit. However, inasmuch as no bargaining agency presently seeks to represent him and it is apparent that he would be without representation unless included as a maintenance employee within the unit of production and maintenance employees, we see no valid reason for excluding him. We shall, therefore, include him within the appropriate unit.

3. *The garage mechanic and his assistant:* These persons are principally engaged in the maintenance of trucks operated by the Company within the plant in connection with production. Although a lesser part of their time is spent in the maintenance of automobiles of the Company's officials, and in some driving for these officials, their chief work consists of maintenance of the Company's trucks. The assistant garage mechanic occasionally drives a Company truck. In cases of extreme breakdown of production machines when the Company is short-handed, the garage mechanic may render assistance in the plant. Both the garage mechanic and assistant garage mechanic are paid at an hourly rate, the assistant being paid substantially less than the garage mechanic. The Molders and the Company have specifically excluded these employees from the coverage of their contract and desire that they be excluded from the appropriate unit. Inasmuch as the garage mechanic and assistant garage mechanic have been excluded by the terms of the contract between the Molders and the Company, and there appears to be no reason for departing in this respect from the unit determined by the collective bargaining practice, we shall exclude them from the unit.

4. *Watchmen:* The watchmen are employees who were formerly engaged in production departments in the Company's plant and who, because of their advanced age and partial incapacity, have been retained in the employ of the Company as watchmen. Their ages are estimated at between 65 and 70 years, and they have not been militarized for this reason. They appear to be regular, full time, hourly paid employees. The parties have characterized them in the record as "superannuated" employees. The UAW-CIO desires that they be included within the unit. The Company and the Molders maintain that they have been excluded from the unit previously established by contract, by custom, if not by the express terms of the contract.[6] Apparently the sole criterion used by the Company and the Molders for excluding these employees is their advanced age and possible incapacity. It does not appear, however, that these watchmen are unable to, or do not, in fact, perform the duties customarily performed by other watchmen, regardless of age. In the absence of convincing reasons for their exclusion, we see no ground for excluding them from the unit. We shall, accordingly, include the watchmen within the appropriate unit.

5. *Sweepers:* The Company employs two sweepers, one in the core room and the other in the pattern shop. Both are hourly paid em-

[6] The only possibly pertinent provision in the contract reads as follows: "The Union shall allow an old or physically incapacitated molder to work for such wages as may be mutually agreed upon between him, the Management, and the Committee." It is not clear whether the word "molder" as used in this context refers exclusively to persons performing the functions of a molder, or to all persons generally covered by the contract

ployees whose rate of pay is substantially less than that of other production or maintenance employees. These employees, too, have been alluded to in the record as superannuated employees. Although they are described as employees "well up in years," they are regular, full time, employees engaged in maintenance work. The Company and the Molders desire that they be excluded from the unit as superannuated employees. The UAW-CIO desire that they be included. For the reasons stated in the preceding paragraph, we see no valid reason for excluding them on this ground and shall therefore include them within the appropriate unit.

6. *Working foremen:* Coffee and Baker are both foremen who work more than 50 percent of their time with the ordinary production or maintenance employees. They are paid at an hourly rate under the provisions of the Fair Labor Standards Act. Coffee, who works in the foundry shop, was formerly on salary, but due to a shortage of help, for the past 12 or 15 months has engaged in actual production work, and his basis of pay has been changed accordingly. He has supervision over 10 to 15 employees, is paid a higher wage than the men under him, and has authority to hire and discharge.

Baker is employed in the yard of the plant and supervises the unloading of incoming material, operates the crane, and performs certain other duties connected with his work, such as cutting old railroad rails. He has supervision over at least one or two employees, is paid at a higher rate than that of the men under him and has authority to hire and discharge. The Company and the Molders desire to exclude both these employees, the UAW-CIO to include them. We find, on the basis of the foregoing, that Coffee and Baker are supervisory employees within the meaning of our usual definition. They will be excluded from the unit as such.

We find that all production and maintenance employees of the Company employed at Muncie, Indiana, including the office porter, watchmen, and sweepers, but excluding the garage mechanic and assistant garage mechanic, metallurgists, assistant metallurgists, office and clerical employees, patternmakers and apprentice patternmakers,[7] superintendents, assistant superintendents, 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.

[7] The term "apprentice patternmakers" is intended to designate and to be applied in this context to Elijah Mulke and Sylvester Doolittle

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by 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.

In addition to the regular employees of the Company, there are certain part-time employees concerning whose eligibility to vote the parties are in dispute. The Company and the Molders desire that they be declared ineligible to vote. The UAW-CIO takes the opposite view. The number of these employees has varied from 3 to 4 to as many as 12 to 15. They are regularly employed in other plants in the community, apparently performing the same or similar types of production work as that done at the Company's plant. They work approximately 3 to 4 hours a day, mostly in the late afternoon and evening, and come and go practically at their pleasure. Although the Company has employed such part-time employees and intends to continue to do so, for such periods of time as they are willing to work, it considers them temporary employees. The record indicates that, due to turnover, the constituency of the group of part-time employees constantly changes. We are of the opinion that the employees in question are temporary employees who do not have a sufficient interest in the conditions of employment of the Company's regular production and maintenance employees or in the outcome of the election to entitle them to vote. The part-time employees who are presently employed, under the circumstances above recited, will not be eligible to vote in the election.[8]

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 Muncie Malleable Foundry Company, Muncie, Indiana, 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

[8] Cf. *Matter of National Machinery Company*, 8–R–1365, 56 N. L. R B 481, issued this day, where it appears that the part-time employees constitute a relatively stable group, the individuals therein having worked regularly for a considerable period of time.

of the Regional Director for the Ninth 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, and the determination made in Section V, above, 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 International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, or by International Molders and Foundry Workers Union of North America, AFL, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.