

In the Matter of MCGANN MANUFACTURING COMPANY, INC., and
UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 4-R-1419.—Decided July 13, 1944

Mr. W. Burg Anstine, of York, Penn., for the Company.

Mr. Arthur F. Johnston and *Mr. John Hartwick*, of York, Penn.,
for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the United Steelworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of McGann Manufacturing Company, Inc., York, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at York, Pennsylvania, on May 31, 1944. The Company and the Union appeared and participated. All parties 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

McGann Manufacturing Company, Inc., is a Pennsylvania corporation with its principal office and only plant in York, Pennsylvania. It is engaged in the manufacture of heavy machinery, such as cargo winches, traveling cranes, lime and hydrate plants, marine buoys, special machinery, chemical equipment, and special LST shipping

parts. Approximately 15 percent of the raw materials used in the manufacturing process is received from outside the Commonwealth of Pennsylvania. During the calendar year 1943, it produced finished goods valued at approximately \$2,000,000, of which 85 percent was shipped in interstate commerce and 10 percent in foreign commerce.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its production and maintenance employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Trial Examiner made at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.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 Union asks for a unit comprising all production and maintenance employees, but excluding foremen, assistant foremen, guards, office and clerical employees, and all supervisory personnel. The Company, agreeing with the list of exclusions formulated by the Union, contends that pattern makers and foundry workers should be excluded as well.

The Company asserts that the Board has already considered the question of the appropriate unit among its production and maintenance employees and in a decision handed down less than a year ago decided that the unit which it now seeks is the appropriate one.²

¹The Trial Examiner stated at the hearing that the petitioner had submitted 133 membership and authorization cards, all bearing apparently genuine signatures, dated as follows: 2 in March 1944; 125 in April 1944; and 6 undated. He also stated that there were 193 employees in the unit sought by the Union.

²*Matter of McGann Manufacturing Company*, 52 N. L. R. B. 55. The I. A. M. lost the election. At the hearing in the instant case, a representative of the I. A. M. appeared to disclaim any interest in the present proceeding and any desire to have his union made a party.

The Union, on the other hand, contends that it was not a party to the prior proceeding and therefore is not bound by that decision, and that the considerations which induced the Board to exclude foundry workers and pattern makers in the previous proceeding are absent in the present case.

In the previous case, the petitioner, the International Association of Machinists, sought a unit of all production and maintenance employees, excluding foundry workers and pattern makers. It sought to exclude foundry workers on the ground that they came under the jurisdiction of the Molders Union which was then conducting an organizational drive among them. The Company, contrary to its present position, desired to include both foundry workers and pattern makers because, it stated, the plant was small and the work of all departments was closely interrelated. The Board, stressing the fact that the jurisdiction of the International Association of Machinists and the Molders Union ". . . is well defined and governed by agreements between themselves which make for harmonious labor relations . . .," excluded the foundry workers from the unit. It also excluded the pattern maker and his assistant because their work was closely allied to that of the foundry workers.

The Board is not precluded from making a redetermination of the appropriate unit, where, as here, its previous decision has not resulted in either a certification or a history of collective bargaining.³ The circumstances which impelled us to exclude foundry workers and pattern makers from the unit in the earlier decision are no longer present. Since the foundrymen and pattern makers are clearly production workers and there is no evidence of interest in either of these two groups of employees by any other union, we shall include them in the unit.

We find that all production and maintenance employees of the Company at York, Pennsylvania, including pattern makers⁴ and foundry workers,⁵ but excluding foremen, assistant foremen, office and clerical employees, guards and all or any 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

The Union's request that the date of eligibility to vote be the payroll period of the date of the petition or hearing because its organi-

³ *Matter of Thomasville Chair Company*, 54 N. L. R. B. 1071.

⁴ There are at present six men in this category, which includes pattern makers' assistants.

⁵ This category includes carpenters and carpenters' assistants.

zational efforts were then completed is hereby denied. The reason given is not sufficient to justify a departure from our customary practice in fixing the date of eligibility. 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, subject to the limitations and additions set forth in the Direction.

Of the 193 persons in the appropriate unit, 92 are classified by the Company as temporary employees. The Company seeks to exclude these temporary employees from voting, while the Union contends that they should be permitted to vote. The temporary employees include (1) a group of men borrowed from other employers through the United States Employment Service, under the so-called "York Plan," for full-time or spare-time work with the Company at their regular occupations, (2) a smaller miscellaneous group composed of people like students, bank clerks, rural mail carriers, etc., who spend some of their spare time working in the Company's factory. The men in group (1) are not paid by the Company at its own wage scale but according to that of their respective regular employers. They are also subject to recall at any time by their regular employers, as a consequence of which, the turn-over among such borrowed employees is very high. The employees in group (2) work no fixed number of hours per week and, so far as it appears, report for work and leave at their convenience. Some of these employees work as little as 2 or 3 hours per week. The Company does not expect to retain either group of temporary employees for more than approximately 4 months when it contemplates completion of its present war contract. Since employees in group (1) are not paid according to the Company's wage scale and are subject to recall at any time, and since the hours of work and manner of employment of employees in group (2) are so uncertain and irregular, we find that neither group of temporary employees has sufficient interest in common with the regular employees to be entitled to participate in the election. Accordingly, we shall exclude both groups of temporary employees from participation in the election.

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 McGann Manufacturing Company, Inc., York, Pennsylvania, 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 Fourth 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 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 the 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 or not they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.