

In the Matter of MARSHALL STOVE COMPANY and UNITED STEEL-
WORKERS OF AMERICA, CIO

Case No. 10-R-1140.—Decided July 15, 1944

Mr. Lindsey M. Davis, of Nashville, Tenn., for the Company.

Mr. William Dunn, of Nashville, Tenn., for the C. I. O.

Messrs. Shelley Waldon and Draper Doyal, of Cincinnati, Ohio,
for the Molders.

Mr. Herbert G. B. King and *Miss Virginia Lee Roberts*, of Chat-
tanooga, Tenn., and *Messrs. Russ O'Neal and Edward Winters*, of
South Pittsburg, Tenn., for the Stove Mounters.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Steelworkers of America, CIO, herein called the C. I. O., alleging that a question affecting Commerce had arisen concerning the representation of employees of Marshall Stove Company, Lewisburg, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. Said hearing was held at Lewisburg, Tennessee, on May 22, 1944. The Company, the C. I. O. International Molders and Foundry Workers Union of North America, Local No. 170 A. F. of L., herein called the Molders, and Stove Mounters International Union, Local No. 14, A. F. of L., herein called the Stove Mounters, the latter two organizations being herein collectively referred to as the A. F. of L. Unions, appeared and participated. All parties 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. At the hearing the A. F. of L. Unions moved to dismiss the petition on the grounds that (1) their bargaining contract with the company is a bar to this proceeding, and (2) the C. I. O.'s evidence of representation with respect to the employees within the

unit it alleges to be appropriate is not substantial enough to raise a question concerning representation. The Trial Examiner reserved ruling upon this motion for the Board. For reasons stated in Section III, *infra*, we hereby deny the motion. 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

Marshall Stove Company is a Tennessee corporation having its principal office and place of business at Lewisburg, Tennessee, where it is engaged in the manufacture of cast iron and magnesium castings. During the last 12 months the Company purchased raw materials consisting of iron, steel, magnesium, coal, equipment, machinery, and supplies valued in excess of \$500,000, of which approximately 60 percent was shipped to its Lewisburg, Tennessee, plant from points outside the State of Tennessee. For the same period the Company's finished products consisting of stoves, stove parts, magnesium castings and magnesium casting parts, were valued in excess of \$800,000, of which approximately 90 percent was shipped to points outside the State of Tennessee.

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

II. THE ORGANIZATIONS INVOLVED

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

International Molders and Foundry Workers Union of North America, Local No. 170, and Stove Mounters International Union of North America, Local No. 14, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

From August 1938 to about June 16, 1943, the Company operated under several consecutive collective bargaining contracts with the Molders and the Stove Mounters, respectively. By virtue of the aforesaid contracts the Molders was recognized as the exclusive bargaining representative of all employees of the Company engaged in the production of castings and the Stove Mounters was recognized as the ex-

clusive bargaining agent of those employees of the Company engaged in certain manufacturing operations which follow the production of castings. The respective terms of each set of contracts ran for relatively parallel periods of time. On June 16, 1943, the A. F. of L. Unions, jointly entered into a contract with the Company covering a single bargaining unit comprised of the two groups of employees who had theretofore been bargained for as separate units. This latter contract provided that it should remain in effect until June 16, 1944. It also contained a provision that, "Either party desiring to change the terms of this agreement shall notify the other party in writing sixty (60) days before expiration of this agreement, otherwise this agreement continues from year to year."

On or about January 17, 1944, the C. I. O. notified the Company that it represented a majority of the employees within an alleged appropriate bargaining unit and requested the Company not to enter into a new contract or renew the current bargaining agreement with the A. F. of L. Unions pending a determination of representatives by the Board. By letters dated April 15 and 17, 1944, respectively, the Molders and the Stove Mounters, separately informed the Company that they desired to renew their contract with the Company for an additional year pursuant to the automatic renewal clause. On April 20, 1944, the C. I. O. filed the amended petition herein.

The A. F. of L. Unions contend that the contract of June 16, 1943, as renewed for an additional year constitutes a bar to a present determination of representatives. We cannot agree with this contention.

It is the established policy of the Board that a bargaining contract executed or renewed after the employer has received notice that a rival union challenges the contracting union's status as the exclusive bargaining representative is no bar to a determination of representatives.¹ Therefore, since it is undisputed that the Company received notice of the C. I. O's claim of representation prior to the renewal date of June 16, 1943, contract, we find that the contract is not a bar to an immediate determination of representatives.

We also find, contrary to the contention of the A. F. of L. Unions, that the statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees within the unit hereinafter found to be appropriate.²

¹ *Matter of Craddock-Terry Shoe Corp*, 55 N. L. R. B. 1406

² The Field Examiner reported that the C. I. O. submitted 208 application for membership cards bearing the names of persons whose names appear on the Company's pay roll of February 26, 1944, which contains the names of 528 persons within the unit it alleges to be appropriate.

The A. F. of L. Unions rely upon their contract with the Company to substantiate their respective representation claims. According to the Field Examiner's report, the aforesaid

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

Contentions of the parties

The C. I. O. seeks a single plant-wide production and maintenance unit while the A. F. of L. Unions contend that the employees of the Company within their respective jurisdictions comprise two separate appropriate units. The Company takes a neutral position.

The Company's plant

Until recently the Company was engaged in the manufacture of stoves and stove parts; however, within the past 2 years its plant was converted for the purpose of producing magnesium castings for aircraft motors and gun turrets. Before conversion, the Company's plant consisted of two separate buildings, approximately 30 feet apart, known as the north and south plants. The north plant housed the foundry in which gray iron castings for stoves were produced and the south plant contained the stove assembly operations. Since the Company has been engaged in war production, the alley-way between the north and south plants has been covered in order to provide more operating space, so that now all the Company's operations are performed under a single roof. In converting from the manufacture of gray iron castings to magnesium castings the Company's operations have undergone both functional and physical changes involving new processes, rearrangement of departments, employment of new personnel, and the addition of a number of new departments. As a result of this operational expansion many of the Company's older employees, because of their skill and experience, have been promoted and transferred to new or different departments.

History of collective bargaining

As previously mentioned in Section III, *supra*, prior to the execution of their joint bargaining contract of June 16, 1943, the Molders and the Stove Mounters each represented a group of the Company's employees pursuant to the provisions of successive separate collective bargaining agreements dating back to August 1938. The Molders' contract unit consisted of all employees engaged in the production of castings while the Stove Mounters represented all employees engaged in manufacturing operations subsequent to the production of castings.

pay roll lists 184 persons in the unit sought by the Stove Mounters and 310 persons in the unit which the Molders alleges to be appropriate.

The employees comprising the Molders' unit, while not strictly a craft group, were for the most part employed in the north plant, and the employees in the Stove Mounters' contract unit worked in the south plant. Under the Company's present operational set-up the A. F. of L. Unions found it difficult to adhere to departmental lines in identifying their respective units. This was especially true with respect to the new departments which the Company found it necessary to create. As a result the A. F. of L. Unions jointly executed the contract of June 16, 1943. Throughout this contract the A. F. of L. Unions are referred to as the "Union." Section III of the contract reads as follows:

The employees, recognized as the appropriate unit for collective bargaining, are generally those engaged in the production and processing of magnesium castings; Molders, Core Makers, Chill Department Workers, Core Assemblers, Melters, Pourers, Shake-out, Knock-out, Sandblast, Band Saw, Rough Lathe, Boring Mill, Drill Press, Chip, Heat Treat, Inspection, Dip, Rotary File, Grind, Polish, Buff, Final Sandblast, Pack and Stencil, Ship, Pressure Test, Chrome Pickle, Impregnating, Repair Department Workers, and Receiving Labor, excepting Plant Guards, Inspectors, Supervisors, Timekeepers, clerical employees, officials, Laboratory Personnel and Executives.

The contract further provides that "any jurisdictional disputes between unions or crafts will be adjusted between unions or crafts . . ." The contract also expressly acknowledges the Company's right to "employ, transfer or promote persons of its own selection . . ." It provides for a single plant grievance committee composed of three employees, of which no more than one shall come from any department. Wage scales appear under the heading, "rates," in an appendix to the contract. All other provisions of the contract such as hours of employment, overtime, and other conditions of employment, are set out generally for all employees.

The A. F. of L. Unions contend that the long history of collective bargaining among the Company's employees on the basis of two separate units militates against the establishment of the single plant-wide unit sought by the C. I. O. They argue that, although they entered into a single bargaining agreement with the Company on June 16, 1943, they have maintained their separate identities and the separation of their units has been recognized under this contract.

While bargaining history is relevant and often persuasive in determining the appropriate unit, it is but one of the factors to be considered and, under all the circumstances in this case, we are convinced that it is not conclusive. The conversion to war production has produced changes so fundamental that the past history of bargaining cannot be considered as controlling the determination of the appropriate

unit. It is clear that all the Company departments are functionally interdependent. The record supports the conclusion that, under the Company's present operational set-up, the bargaining units previously established by collective bargaining agreements have lost their identities and may no longer be considered appropriate. It is apparent that this fact was also recognized by the contracting parties when they negotiated their last contract. Furthermore, the A. F. of L. Unions have indicated their willingness to continue their joint agreement for another year. Accordingly, we find that a single plant-wide unit is appropriate for the purposes of collective bargaining.

There remains for consideration the specific composition of the unit.

At the hearing the parties based their contentions as to the appropriate unit upon a current classified pay roll of the Company which was introduced into evidence. The C. I. O.'s proposed unit includes all employees in the Sand Conditioning Department, Core Department, Molding Department, Pour and Shakeout Department, Melting Department, Maintenance Department, Pattern Department, Reclaim Department, Rough Cleaning Department, Gate Removing Department, Heat Treat Department (except junior clerks), Rotary Filing Department, Final Operations Department, Shipping Department, Receiving Department (except clerks-stockroom, clerks-stockroom beginners and clerk-receiving), Carpenter Shop, Stove Repair Parts Department, and General Factory Department (except matron and laboratory employees), of the Company, but excludes militarized guards and watchmen, employees of the Experimental Department, Lay-out and Dimensional Department, and Personnel Department, office clerical help, timekeepers, general foremen, foremen class I, foremen class II, shift foremen and all supervisors with authority to recommend hiring and discharging. A combination of the units sought by the A. F. of L. Unions coincides substantially with the single unit which the C. I. O. claims is appropriate. The parties, however, disagree with respect to the inclusion of certain employee classifications in the appropriate unit. We shall discuss each of these disputed categories below:

Head sand mix operator: This employee works in the sand conditioning department. He is in charge of about 12 employees and has authority effectively to recommend their discharge. He spends the majority of his working time supervising the work of these employees whose function it is to run tests on sand, and the remainder of the time he conducts special tests on the sand for moisture content and permeability. He reports directly to the general foreman of the department. The C. I. O. is the only interested party who desires his inclusion. In view of his apparent supervisory authority, we shall exclude the head sand-mix operator from the appropriate unit.

Melting control operator: This position is held by a female employ e in the Melting Department. She works in the foundry and sits in a chair beside an electric control switch and a dial which records the temperature of the melting pot. It is her duty to note the temperature indicated on the dial and to inform the melting helpers whether or not more heat should be applied to the melting pot. The operator is paid an hourly wage and has no supervisory duties. She is under the supervision of the foreman in charge of the melting operation. The Company desires her exclusion on the grounds that her duties are purely clerical. The C. I. O. and the A. F. of L. Unions would include her in the appropriate unit. Since her duties are closely connected with the production of castings, we shall include the melting control operator in the appropriate unit.

Welder: The welder in dispute is in charge of the new Reclaim Department of the Company. He exercises a high degree of skill in the performance of his welding duties. He supervises four employees, has authority to recommend their discharge, spends approximately 75 percent of his working time in supervising and the remaining 25-percent performing welding operations, and reports directly to the plant superintendent. His pay is comparable to that of a shift foreman. The C. I. O. and the A. F. of L. Unions would include this welder in the appropriate unit, while the Company desires his exclusion. Since it appears that his duties bring him within our customary definition of supervisory employees, we shall exclude the welder in charge of the Reclaim Department from the appropriate unit.

Production chasers: The Company employs a number of high-school boys in its General Factory Department who are classified as production chasers. Certain special castings must be produced within a limited time and it is the duty of the production chasers to follow up each special casting to see that it receives special and immediate attention on the production line. They report to the plant superintendent. In the performance of their duties the production chasers keep a running record of each special casting. The Company contends that they should be excluded from the appropriate unit because of their clerical duties. The C. I. O. and A. F. of L. Unions desire that the production chasers be included in the unit. Since it appears that their duties and interests are closely related to production, we shall include the production chasers in the appropriate unit.

Inspectors and inspectors-junior: These employees are listed as part of the General Factory Department, but are assigned throughout the plant to regular stations for the purpose of checking castings for defects. They work under the supervision of the chief inspector and, in connection with their inspection duties, they keep records and report defects to the chief inspector who in turn reports to the foreman.

in charge of the particular job reported. Experience and skill is the only factor differentiating inspectors from inspectors-junior. Neither of these classifications of employees has authority to make recommendations affecting the production workers pay or employment status. They are transferred from station to station throughout the plant. The C. I. O. desires their inclusion in the appropriate unit. The Company seeks their exclusion on the ground that they are a part of management. The A. F. of L. Union do not take a positive position with respect to these employees. Since inspectors and inspectors-junior work in the plant in close proximity to the production workers, have no supervisory authority and are in no respect part of management, we shall include them in the appropriate unit.

In view of the foregoing facts and upon the entire record in the case, we find that all employees of the Company employed in the Sand Conditioning Department (except the head sand mix operator), Core Department, Molding Department, Pour and Shakeout Department, Melting Department (including the melting control operator), Maintenance Department, Pattern Department, Reclaim Department (except Welder), Rough Cleaning Department, Gate Removing Department, Heat Treat Department (except junior clerks), Rotary Filing Department, Final Operations Department, Shipping Department, Receiving Department (except clerks-stockroom, clerks-stockroom beginners and clerk-receiving), Carpenter Shop, Stove Repair Parts Department, General Factory Department (except matron and laboratory employees, but including production chasers and inspectors and inspectors-junior), excluding militarized guards and watchmen, employees of the Experimental Department, Lay-out and Dimensional Department, and Personnel Department, office clerical workers, timekeepers, general foremen, foremen class I, foremen class II, shift 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.

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.³

³At the hearing the C. I. O. and the A. F. of L. Unions requested that their names appear on the ballot as hereinafter set forth in the Direction of Election

We shall place the A. F. of L. Unions jointly on the ballot and if they are selected by a majority of the employees voting in the election hereinafter directed, they will be jointly certified as the single representative of the employees comprising the appropriate 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 Marshall Stove Company, Lewisburg, Tennessee, 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 Tenth 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 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 any 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 United Steelworkers of America, CIO, or by International Molders and Foundry Workers Union of North America, Local No. 170, A. F. of L., and Stove Mounters Union of North America, Local No. 14, A. F. of L., jointly, for the purposes of collective bargaining, or by neither.

MR. GERAUD D. REILLY took no part in the consideration of the above Decision and Direction of Election.