In the Matter of MILLS INDUSTRIES, INCORPORATED *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 8 (A. F. OF L.) *and* INTERNATIONAL UNION, MINE, MILL & SMELTER WORKERS, LOCAL 647, C. I. O.

In the Matter of MILLS INDUSTRIES, INCORPORATED *and* INTERNATIONAL UNION, MINE, MILL & SMELTER WORKERS, C. I. O.

In the Matter of MILLS INDUSTRIES, INCORPORATED *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 8 (A. F. OF L.)

Cases Nos. 13–RE–27, 13–R–2336 and 13–R–2457, respectively.—Decided July 20, 1944

Pyffe & Clarke, by *Mr. David R. Clarke*, of Chicago, Ill., for the Company.

Meyers & Meyers, by *Mr. Ben Meyers*, of Chicago, Ill., for the C. I. O.

Messrs. Daniel D. Carmell, P. E. Siemiller, and *James McDonald*, of Chicago, Ill., for the I. A. M. and Lodge 113.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petitions duly filed by Mills Industries, Incorporated, herein called the Company, International Union of Mine, Mill & Smelter Workers, C. I. O., herein called the C. I. O., and International Association of Machinists, District No. 8, A. F. of L., herein called the I. A. M., respectively, alleging that questions affecting commerce had arisen concerning the representation of employees of Mills Industries, Incorporated, Chicago, Illinois, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John R. Hill, Trial Examiner. Said hearing was held at Chicago, Illinois, on May 19, 22, and 23, 1944. The Company, the C. I. O., the I. A. M., and Die and Tool Makers Lodge 113, International Association of Machinists, A. F. of L., herein called Lodge

113, appeared and participated.[1] All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board. The Trial Examiner reserved ruling for the Board upon several motions made by the parties at the hearing.

The first of these motions was made by the Company. It moved that the instant proceedings be postponed or, in the alternative, dismissed until disposition has been made of the pending charges of unfair labor practices filed against the Company by the C. I. O. The I. A. M. joined in this motion. As previously noted, the C. I. O. filed a waiver in Cases Nos. 13–RE–27 and 13–R–2336 with respect to all such charges. The only case to which its waiver does not apply is Case No. 13–R–2457 wherein the I. A. M. is petitioning for a separate determination of representatives among the employees of the Company's plant located at 4335 Palmer Street, Chicago, Illinois.[2] Inasmuch as the Company's petition in Case No. 13–RE–27 embraces all three of its plants and the C. I. O. has waived its right to protest any election which the Board may direct as a result of that petition, and since we hereinafter find a three-plant unit to be appropriate and direct an election therein, we are of the opinion that the aforesaid motion of the Company and the I. A. M. raises a moot question.[3] It is hereby denied.

Another of the motions which were referred to the Board was made by the I. A. M. in which it contends that Case No. 13–R–2336, in which the C. I. O. seeks a determination of representatives among the employees of the Company's plant located at 4646 Lake Street, Chicago, Illinois, should be severed from the instant proceedings and dismissed on the ground that since the Regional Director originally refused to issue a notice of hearing therein, he had no authority, under the Board's Rules and Regulations, thereafter to rescind his former action and issue a notice of hearing. In view of our finding of the appropriateness of a three-plant unit, this motion also raises a moot question. However, we do not think that the Regional Director exceeded his administrative authority or violated any of the Board's Rules and Regulations. We hereby deny the I. A. M.'s motion. Because of our finding that a three-plant unit is appropriate, we also hereby deny the I. A. M.'s motion to dismiss the C. I. O.'s petition in Case No. 13–R–

[1] A waiver signed by the C. I. O., introduced into evidence at the hearing, states that the C. I. O. waives the right to protest any election held as a result of consolidated Cases Nos. 13–RE–27 and 13–R–2336 on the basis of the charges of unfair labor practices filed by it in Cases Nos. 13–C–2114, 13–C–2115, 13–C–2264, and 13–C–2349.

[2] We note that the C. I. O. filed its waiver prior to the date on which the I. A. M. filed its petition in Case No. 13–R–2457.

[3] The C. I. O. stated on the record that should the Board direct an election among the employees in the unit requested by the Company or in the units sought by it, it would not use any of its pending charges as a basis for objecting to such elections.

2336 on the ground that prior to the Regional Director's refusal to issue a notice of hearing in that case, the C. I. O. did not evidence that it represented a sufficient number of employees within the unit it claimed to be appropriate to raise a question concerning the representation of such employees.

The C. I. O. moved to dismiss the I. A. M.'s petition in Case No. 13–R–2457 on the grounds that (1) the I. A. M. has not submitted a sufficient showing with respect to the employees in the unit it alleges to be appropriate to warrant a separate determination of representatives for such employees, (2) since the C. I. O.'s waiver does not extend to this case, it is contrary to Board policy to proceed on the I. A. M.'s petition, (3) the National War Labor Board, herein referred to as W. L. B., issued a directive order pertaining to the plant wherein the I. A. M. is seeking an election with which the Company has not fully complied, and (4) the C. I. O.'s "partial" contract with the Company constitutes a bar to a determination of representatives for the employees whom the I. A. M. seeks to represent. Since we hereinafter find that a three-plant unit is appropriate, we find no merit in the first two grounds upon which the C. I. O. bases its motion to dismiss. For reasons stated in Section III, *infra*, we find no merit in the third and fourth grounds set forth in the C. I. O.'s motion. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the consolidated proceeding, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE COMPANY

Mills Industries, Incorporated, is an Illinois corporation engaged in the business of manufacturing certain war materials at three plants in Chicago, Illinois, located at 4100 Fullerton Avenue, 4535 Palmer Street, and 4646 Lake Street, herein referred to as the Fullerton, Palmer, and Lake plants, respectively. During the calendar year 1943, the Company used raw materials consisting of steel, brass, iron, copper, and various other raw materials, valued in excess of $1,000,000 over 30 percent of which was purchased and shipped to the Company's plants from points outside the State of Illinois. During the same period, the Company manufactured finished products valued in excess of $5,000,000, over 90 percent of which was shipped to points outside the State of Illinois.

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

International Union of Mine, Mill & Smelter Workers is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

International Association of Machinists, District No. 8, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Die and Tool Makers Lodge 113, International Association of Machinists, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On March 16, 1943, pursuant to the results of an election directed by the Board in a prior representation case,[4] the Board certified the C. I. O. as the exclusive bargaining representative of the production and maintenance employees at the Company's Palmer plant, except for certain excluded categories.[5] Following the certification, the Company and the C. I. O. reached an impasse in their bargaining negotiations with the result that the matter was certified to the W. L. B. as a dispute case. On March 14, 1944, the W. L. B. issued an order[6] directing the parties to enter into a collective bargaining contract embodying certain enumerated terms and conditions of employment. Thereafter, on or about April 21, 1944, the Company and the C. I. O. executed such an agreement.[7] The C. I. O. refers to this agreement as a "partial" contract.

On March 30, 1943, the Company and the I. A. M. entered into two contracts which were identical except for the clauses describing the bargaining units, one covering employees of the Fullerton plant and the other covering employees of the Lake plant. Each of these contracts contains the following provision:

> This Agreement shall take effect as of March 29, 1943, and shall continue in effect until March 28, 1944, and from year to year thereafter, unless written notice is given by either party hereto

---

[4] *Matter of Mills Novelty Company*, 46 N L R B 1207, and 47 N. L R B 409. The Company was reincorporated under its present name soon after the issuance of the certification in the cited case

[5] The employees of the Palmer plant comprising the bargaining unit for which the C. I. O. was certified were all production and maintenance employees, including working group leaders, but excluding operating and maintenance engineers, electrical maintenance mechanics, steamfitters and pipefitters, office and clerical employees, supervisory employees above the rank of working group leaders, and armed guards

[6] In re *Mills Novelty Company*, 14 W L. B 654

[7] This agreement is merely a signed copy of the W. L. B.'s Directive Order and therefore contains only provisions embodying the resolution of the issues certified to the W. L. B. Although dated April 21, 1944, it does not provide for any definite period of duration nor does it contain a provision granting exclusive recognition to the C. I. O. However, it does provide for maintenance of membership in the C. I. O.

to the other on or before thirty (30) days prior to March 28, 1944, or the same day of any subsequent year, requesting that the agreement be amended.

Prior to the renewal notice date, the I. A. M. requested the Company to enter into certain supplementary provisions with respect to these two contracts. It appears that thereafter the Company and I. A. M. had several meetings in which they negotiated a revision of the job classifications and a new vacation plan, and entered into two supplementary contracts both dated March 29, 1944.

On or about November 26, 1943, the Company and the I. A. M. executed a third 1-year automatically renewable contract covering a bargaining unit at the Palmer plant similar to that for which the C. I. O. was the certified representative. The operative date of the renewal clause is 30 days prior to November 25, 1944.

The Company and Lodge 113 entered into a collective bargaining contract on April 26, 1943, covering all toolroom employees at the Fullerton plant. This contract also contains an automatic renewal clause similar to those in the I. A. M.'s contracts at the Fullerton, Lake, and Palmer plants, the renewal date having been 30 days prior to March 28, 1944.

Apparently none of the parties to contracts containing automatic renewal clauses gave notice of a desire to amend or terminate prior to the operative dates of such clauses.[8]

From the record it appears that on or about February 3, 1944, and again on February 22, 1944, the C. I. O. orally advised the Company that it represented a majority of the employees at the Fullerton and Lake plants, respectively, who, it alleged, comprised separate appropriate units, and requested recognition as their exclusive bargaining representative. The Company declined to accord the C. I. O. such recognition on the grounds that it had existing bargaining contracts with the I. A. M. covering the employees sought by the C. I. O. Thereafter, on February 23, 1944, the C. I. O. filed its petitions in Cases Nos. 13–R–2336 and 13–R–2337 with respect to the Lake and Fullerton plants, respectively.[9] On March 17, 1944, the Company filed its petition in Case No. 13–RE–27 and on May 9, 1944, the I. A. M. filed its petition in Case No. 13–R–2457.

Neither the Company nor the I. A. M. urges that the contracts to which they are signatories bar a present determination of representatives on a three-plant unit basis. Thus, inasmuch as we hereinafter find that a three-plant unit is appropriate, the contracts between the

[8] The C I O.'s "partial" contract does not contain such a clause. The operative date of the automatic renewal clause in the I. A. M 's Palmer plant contract is October 26. 1944.

[9] On April 1, 1944, the Regional Director notified the Company and the C. I. O. that he had declined to issue a notice of hearing in Case No 13–R–2337. No petition for review was thereafter filed with the Board by the C. I. O.

Company and the I. A. M. do not preclude an immediate determination of representatives.

The C. I. O. contends that its "partial" contract covering the employees of the Palmer plant coupled with the W. L. B.'s Directive Order concerning the employees at that plant bars an election in which such employees would be eligible to vote. Our prior determination, made 1½ years ago, that a bargaining unit limited to the employees of the Palmer plant was appropriate was based upon the facts reflected by the record in that case which indicated that organization among the Company's employees for the purposes of collective bargaining had been confined to the Palmer plant, and that such employees comprised an identifiable group of workers to whom collective bargaining should be made an immediate possibility. For reasons stated in Section IV, *infra*, we are of the opinion that the single plant unit is no longer appropriate and that a three-plant unit is proper for collective bargaining purposes. Therefore, since the Directive Order issued by the W. L. B. and the C. I. O.'s "partial" contract encompass but a segment of the employees in the appropriate unit, we find that no bar to these proceedings exists.

Inasmuch as one of the petitions herein was filed by the Company, and the C. I. O. and I. A. M. have contractual relationships with it, we are of the opinion that a statement prepared by the Regional Director, introduced into evidence at the hearing, indicates that each of these labor organizations represents a substantial number of employees within the unit which we hereinafter find to be appropriate.[10]

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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

Contentions of the parties

The Company contends that a Company-wide three-plant production and maintenance unit, exclusive of certain specific employee classifications, is appropriate for the purposes of collective bargaining.

[10] The Regional Director's statement is reflected in the following table:

Plant	Number of employees*	C I O designations	I A M designations
Lake	404	251	
Fullerton	1,040	248	
Palmer	574		104
Total	2,018	499	104

*The pay-roll information was submitted for the period ending approximately May 12, 1944. However, since no names were submitted, no check could be made of the names appearing on the designation against the pay roll

The I. A. M. argues that since it is the present recognized bargaining representative of the employees at the Lake and Fullerton plants by virtue of valid subsisting contracts with the Company, the only question to be resolved by the Board concerns the employees of the Palmer plant whom it claims comprise a separate appropriate unit. However, in the alternative, the I. A. M. agrees that the unit proposed by the Company is appropriate. The C. I. O. contends that no determination of representatives should be made among the employees of the Palmer plant since it is their duly certified representative, but that the Board should find two separate appropriate units, one comprised of employees at the Lake plant and the other consisting of employees in the Fullerton plant.

Three-plant unit v. *single plant units*

As previously mentioned, the Company operates three plants in Chicago, Illinois, located at 4100 Fullerton Avenue, 4535 Palmer Street, and 4646 Lake Street, respectively. The Palmer plant is approximately 1½ miles from the Fullerton plant, which in turn is 4 miles from the Lake plant. The Company refers to the Fullerton plant as its main plant, and the Lake and Palmer plants as supplementary plants. All the Company's operations were originally housed in the Fullerton plant. Due to the need for additional space in which to carry on its expanded operations, the Company leased the building on Palmer Street and later built the Lake plant. The Company is engaged in similar manufacturing operations at each of its three plants.

The assistant plant manager, who is in charge of the manufacturing operations at all three plants, is located at the Fullerton plant. He acts as superintendent of the Palmer plant. The highest supervision at the Palmer plant consists of two foremen, who report to him. The Lake plant is under the supervision of a superintendent who reports directly to the assistant plant manager. There is no superintendent at the Fullerton plant; the foremen there report directly to the assistant plant manager. All hiring for the three plants is done at the employment office at the Fullerton plant. An interviewing clerk, however, presently goes to the Lake plant on certain days every week to interview applicants for employment at that plant. The Company's main office is at the Fullerton plant, and timekeeping appears to be the only work of a clerical nature performed either at the Lake or Palmer plants. All drafting and engineering work and tool designing are done at the Fullerton plant. It appears that production schedules for all three plants are determined at the Fullerton plant office. All time studies, labor control, and timekeeping activities are

directed from the Fullerton plant. The assistant plant manager stated that personnel is transferred from plant to plant every day.

The Company's only toolroom is located at the Fullerton plant. It manufactures tools, dies, jigs, and fixtures for all three plants. The Company has machinery at the Fullerton plant capable of performing operations which cannot be performed either at the Lake or Palmer plant. As a result, at the Lake plant, for example, the Company assembles a product, parts of which are machined at both that plant and the Fullerton plant. According to the detailed and uncontradicted testimony of the assistant plant manager, there is considerable interdependence and integration of the operations in the Company's three plants.

As stated in Section III, *supra*, our prior determination that a unit limited to employees of the Palmer plant was appropriate was based upon the fact that organization had not then extended beyond the Palmer plant. However, the record in the instant case indicates that both the I. A. M. and the C. I. O. have extended their organizational activities to all three plants.

Upon the basis of the foregoing findings of fact, we are of the opinion and find that, in view of the present state of organization among the Company's employees, a three-plant unit is now appropriate for the purposes of collective bargaining.

The composition of the unit

There remains for consideration the specific composition of the appropriate unit.

The parties are in substantial agreement as to the categories of employees to be included in, and those to be excluded from, the appropriate unit. By this agreement the parties would apparently include in the unit all production and maintenance employees, working group leaders, senior leaders, set-up men, inspectors, storekeepers, and janitors, and exclude operating and maintenance engineers, electrical maintenance mechanics, steamfitters and pipefitters, office and clerical employees, supervisory employees above the rank of working group leaders, armed guards, watchmen, production follow-up men, typists in production departments, technical engineers, draftsmen, and truck drivers.

The parties are in dispute with respect to the disposition of toolroom employees, timekeepers, factory clerks, relief clerks, and supervisors in the timekeeping department. We shall dispose of these controversies below.

Toolroom employees.—The C. I. O. contends that the employees in the toolroom at the Fullerton plant are properly a part of the produc-

tion and maintenance unit, whereas the Company, the I. A. M., and Lodge 113 claim that they should be excluded. Since these employees comprise a craft group currently bargained for as a separate unit by Lodge 113, we shall exclude them.

Timekeepers, factory clerks, relief clerks, and supervisors in the timekeeping department.—The Company employs 36 persons listed as timekeepers and factory clerks. These classifications, according to the Company's assistant plant manager identify employees who perform the usual clerical duties connected with timekeeping. Relief clerks substitute for timekeepers and factory clerks when they are absent. The supervisors in the timekeeping department, who are regarded by the Company as supervisory employees, train any new clerical employees hired by the timekeeping department and also supervise the work of the timekeepers and factory clerks. The I. A. M. desires to include timekeepers, factory clerks, relief clerks, and supervisors, while the C. I. O. would exclude them. Since the duties performed by these employees in the timekeeping department appear to be essentially clerical in nature, we shall exclude them from the appropriate unit.

We find that all production and maintenance employees at the Fullerton, Lake, and Palmer plants of the Company, including working group leaders and senior leaders, set-up men, inspectors, storekeepers, and janitors, but excluding operating and maintenance engineers, electrical maintenance mechanics, steamfitters and pipefitters, toolroom employees, timekeepers, factory clerks, relief clerks, and supervisors in the timekeeping department, technical engineers, draftsmen, truck drivers, office and clerical employees, watchmen, armed guards, supervisory employees above the rank of working group leaders, 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 means of 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.[11]

[11] The C. I. O. and the I. A. M. requested that their names appear on the ballot as hereinafter set forth in the Direction of 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 Mills Industries, Incorporated, Chicago, Illinois, 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 Thirteenth 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 they desire to be represented by International Union of Mine, Mill & Smelter Workers—C. I. O., or by International Association of Machinists, District No. 8, A. F. of L., for the purposes of collective bargaiining, or by neither.