

In the Matter of UNITED ENGINEERING AND FOUNDRY COMPANY *and*
UNITED STEELWORKERS OF AMERICA, CIO

Case No. 6-R-973.—Decided August 9, 1944

Mr. George L. Myers, of Pittsburgh, Pa., for the Company.

Mr. Philip M. Curran, of Pittsburgh, Pa., and *Mr. John Grittie*, of New Castle, Pa., for the Steelworkers.

Mr. Joseph A. Padway, by *Mr. Herbert W. Clements*, of Rochester, N. Y., *Mr. John Swan*, of Philadelphia, Pa., and *Mr. C. J. Trump*, of New Castle, Pa., for the Molders.

Mr. H. I. Smith, of Pittsburgh, Pa., and *Mr. A. G. Skunder*, of New Castle, Pa., for the Machinists.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Steelworkers of America, CIO, herein called the Steelworkers, alleging that a question affecting commerce had arisen concerning the representation of employees of United Engineering and Foundry Company, New Castle, Pennsylvania, 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 New Castle, Pennsylvania, on June 28, 1944. The Company, the Steelworkers, International Molders & Foundry Workers Union of North America, Local 398, A. F. of L., herein called the Molders, and Lodge No. 1671, International Association of Machinists, herein called the Machinists, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the Molders moved to dismiss the petition; the Trial Examiner referred this motion to the Board. For reasons hereinafter set forth in Section III, the motion is denied. The Trial Examiner's rulings made at the hearing

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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

United Engineering and Foundry Company is a Pennsylvania corporation operating plants in Vandergrift, Pittsburgh, and New Castle, Pennsylvania, and Youngstown and Canton, Ohio. We are concerned herein with its New Castle, Pennsylvania, plant, referred to hereinafter as the New Castle plant. The New Castle plant consists of a foundry, machine shop, and pattern shop engaged in the production of rolling mill equipment, forging presses, extrusion presses, and auxiliary rolling mill equipment for rolling mills and the aluminum and steel industries. During the 12 months preceding the date of the hearing herein, the Company purchased for use at the New Castle plant raw materials valued at more than \$500,000, of which in excess of 50 percent was purchased from points outside the State of Pennsylvania. During the same period the New Castle plant produced finished products exceeding \$500,000, of which more than 50 percent was shipped to points outside the State of Pennsylvania.

The Company admits 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 & Foundry Workers Union of North America, Local 398, and Lodge No. 1671, International Association of Machinists, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On February 25, 1944, the Steelworkers requested recognition from the Company as the collective bargaining representative of certain of the employees at its New Castle plant. The Company replied on March 1, stating, in effect, that it could not grant this request in view of its agreements with other labor organizations covering its employees. On April 27, the Steelworkers addressed a similar request

to the Company, and on May 6 the Company replied, stating that its position, as set forth in its letter of March 1, had not changed.

On March 10, 1943, the Company executed an agreement with the Molders covering its foundry employees. The agreement provided as follows:

This Agreement will become operative on March 1, 1943, and shall continue in full force and effect up to and including March 1, 1944, and shall continue in force thereafter from year to year unless either party shall have given thirty (30) days' written notice to the other of its desire that the same terminate on the March 1 succeeding such written notice, except that during the first year either party may terminate the contract by thirty (30) days' notice in writing to the other at any time after more than fifty percent (50%) of the total number of employees necessary to fully man the available jobs within the bargaining unit are employed.

Sometime prior to February 1, 1944, the Molders notified the Company that it desired to make certain changes in the contract. Thereafter, the Company and the Molders carried on negotiations with respect to these changes commencing early in February and continuing through the middle of March. On March 23, the parties executed a new agreement covering the foundry employees, which was made retroactive to March 1, 1944.

The Molders contends that a bar exists to a current determination of representatives by reason of its contractual relationship with the Company. We do not agree. As previously indicated, the Steelworkers appraised the Company of its claims to representation after the Molders had terminated the 1943 contract by giving notice to the Company of a desire to change its terms and before the 1944 contract between the Company and the Molders was executed. Under these circumstances, neither contract operates as a bar.

The Company also has a contract with the Machinists which is dated June 1, 1943. This contract provides for a term of 1 year and for its automatic renewal from year to year in the absence of notice of termination given by either party 30 days prior to the expiration of any annual period. Since the Steelworkers' claim to representation preceded the 30-day period, this contract does not constitute a bar to the instant proceeding.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Steelworkers represents a substantial

number of employees in each of the units 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 Molders currently represents "all foundry employees of the New Castle plant [including carpenters, outside laborers, and weighmasters] . . . excepting clerical, executive, foremen, police, guards, inspectors, and salaried employees . . . machine and pattern shop employees."² The Machinists currently represents "all maintenance, production and service employees of the [New Castle plant's] machine shop [including employees of the weld and forge shops], excepting administrative, executive, office and clerical employees; salesmen, foremen, assistant foremen, policemen, guards, watchmen, cafeteria employees and salaried employees . . . foundry and pattern shop employees, carpenters and outside laborers."³ The Steelworkers seeks a single unit consisting of the employees covered by both contracts. It indicated, however, that it is willing to participate in elections in two units, one comprised of the employees represented by the Molders and the other composed of employees represented by the Machinists, but asks that, in the event it wins both elections, it be certified as the representative of the foundry and machine shop employees as a single unit. The Molders, the Machinists, and the Company contend that the foundry and machine shop employees constitute separate units.⁴

Although the over-all management of the New Castle plant is centralized, its operations are divided among the machine shop,

¹ The statement of the Regional Director may be summarized by the following chart :

Type of unit :	Number of employees in the unit	Representation showing in the unit <i>Steelworkers</i>
Production and maintenance unit-----	1,322	544
Machine shop-----	822	279
Foundry-----	500	259
Designations signed by employees not listed as engaged either in the machine shop or the foundry-----		16

The interests of the Machinists and the Molders are established by their contracts with the Company

² Article I, Section 1, of the contract between the Molders and the Company, executed March 23, 1944.

³ Article II, Section 2, of the contract between the Machinists and the Company, dated June 1, 1943.

⁴ All parties agree upon the exclusion of cafeteria employees, expeditors, laboratory employees, and timekeepers from any unit.

pattern shop,⁵ and foundry, each housed, to a large extent, in separate buildings, and each under separate supervisors. Furthermore, while a large percentage of the products of the foundry is machined at the machine shop, and similarly, a large percentage of the work performed in the machine shop comes from the foundry, it is nevertheless true that the foundry sends a substantial amount of work to other machine shops of the Company, and the machine shop performs operations on products originating from other foundries of the Company. There is no interchange of personnel between the machine shop and the foundry.

In view of the functional independence of the machine shop and the foundry, and the past collective bargaining history of the Company at its New Castle plant, we are of the opinion and find that employees of the machine shop and the foundry constitute distinct and separate units. However, in the event the Steelworkers is selected as bargaining agent by the employees of both units in the elections hereinafter directed, it will not be inappropriate for the Steelworkers and the Company to engage in collective bargaining on the basis that the Steelworkers represents such employees as a single group.

A dispute exists with respect to inspectors and instructors, whom the Company desires to exclude from any collective bargaining unit, whereas the Steelworkers and the Machinists desire to represent them.⁶ The inspectors examine products for faulty work, and submit their findings to the chief inspector⁷ for final disposition. Although their findings may be used indirectly as the basis for discharge, the inspectors have no authority to make recommendations which affect the status of the employees whose work they inspect. Instructors teach new employees how to operate machines, but make no recommendations affecting status of such employees to the latter's immediate supervisors. Furthermore, both inspectors and instructors in the machine shop are included within the collective bargaining unit currently represented by the Machinists. We are of the opinion and find that employees in neither of these categories are supervisors within the meaning of our usual definition, and we shall include inspectors and instructors in the machine shop unit.⁸

The record discloses that the Company employs gang leaders in both the foundry and the machine shop of the New Castle plant.

⁵ The employees of the pattern shop are not involved in this proceeding.

⁶ There are instructors and inspectors in the machine shop. The record shows that there are no instructors in the foundry, and that the sole foundry inspector is a former pattern maker, represented by the Pattern Makers, who is excluded from the unit currently represented by the Molders.

⁷ All parties agree upon the exclusion of the chief inspector, and the record clearly indicates that he is a supervisory employee within the meaning of our customary definition.

⁸ There are no instructors in the foundry. The foundry inspector is excluded from the foundry unit by stipulation of the Molders, Steelworkers and the Company.

Since it is clear that these employees possess the authority to make recommendations affecting the status of employees, we shall exclude them on the ground that they are supervisors.

In accordance with the foregoing, we find that the following units are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All foundry employees of the Company's New Castle plant, including carpenters, outside laborers, and weighmasters, but excluding clerical employees, policemen, guards, the inspectors, cafeteria employees, expeditors, timekeepers, laboratory employees, employees of the pattern shop, executive and salaried employees, foremen, gang leaders, 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, and all other employees of the Company; and

2. All maintenance, production and service employees of the Company's New Castle machine shop, including all inspectors (except the chief inspector), instructors, employees of the weld and forge shops, but excluding office and clerical employees, salesmen, policemen, guards, watchmen, cafeteria employees, timekeepers, laboratory employees, expeditors, carpenters, outside laborers, employees of the foundry and pattern shop, administrative, executive and salaried employees, foremen, assistant foremen, gang leaders, chief inspector, 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.

V. THE DETERMINATION OF REPRESENTATIVES

The record discloses that the Company expects a 200 percent increase in personnel in unit 2 (machine shop employees) by November 1, 1944, due to war orders. Under these circumstances, we shall entertain a new representation petition affecting the employees in this unit within a period less than 1 year, but not before the expiration of 6 months, from the date of any certification which we may issue in the instant proceeding upon proof that (1) the number of employees in this unit is more than double the number of employees eligible to vote in the election hereinafter directed; and (2) the petitioning labor organization represents a substantial number of employees in the expanded unit.⁹

We find that the question concerning representation which has arisen can best be resolved by means of separate elections by secret ballot among the employees in the units described in Section IV, *supra*, who were employed during the pay-roll period immediately

⁹ See *Matter of Aluminum Company of America*, 52 N. L. R. B. 1040.

preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth therein.¹⁰

DIRECTION OF ELECTIONS

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with United Engineering and Foundry Company, New Castle plant, New Castle, Pennsylvania, separate elections 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 Sixth 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 following units of employees of the Company at its New Castle plant 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 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:

1. All foundry employees of the Company's New Castle plant, including carpenters, outside laborers, and weighmasters, but excluding clerical employees, policemen, guards, the inspector, cafeteria employees, expeditors, timekeepers, laboratory employees, employees of the pattern shop, executive and salaried employees, foremen, gang leaders, 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, and all other employees of the Company, to determine whether they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by International Molders & Foundry Workers Union of North America, Local 398, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither;

¹⁰ The employees in unit 1 (foundry employees) shall determine whether they desire to be represented for the purposes of collective bargaining by the Steelworkers, the Molders, or by neither; the employees in unit 2 (machine shop employees) shall determine whether they desire to be represented by the Steelworkers, the Machinists, or by neither.

2. All maintenance, production and service employees of the Company's New Castle machine shop, including all inspectors (except the chief inspector), instructors, employees of the weld and forge shops, but excluding office and clerical employees, salesmen, policemen, guards, watchmen, cafeteria employees, timekeepers, laboratory employees, expeditors, carpenters, outside laborers, employees of the foundry and pattern shop, administrative, executive and salaried employees, foremen, assistant foremen, gang leaders, chief inspector, 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, to determine whether they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by Lodge No. 1671, International Association of Machinists, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Elections.