

In the Matter of LIMA LOCOMOTIVE WORKS, INCORPORATED and INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL #272 (AFL)

Case No. 8-R-1450.—Decided September 11, 1944

Messrs. C. H. Neville, C. H. Cory, and W. L. Neville, of Lima, Ohio, for the Company.

Messrs. Joseph A. Padway and Robert A. Wilson, of Washington, D. C., for Local 272.

Mr. Edward Lamb, of Toledo, Ohio, and Messrs. Howard Seren, Allen O. Ireland, and Walter G. Barrington, Jr., of Lima, Ohio, for the C. I. O.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Molders & Foundry Workers Union of North America, Local #272 (AFL), herein called Local 272, alleging that a question affecting commerce had arisen concerning the representation of employees of Lima Locomotive Works, Incorporated, Lima, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Frank L. Danello, Trial Examiner. Said hearing was held at Lima, Ohio, on July 7, 1944. The Company, Local 272, and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., Local 106, herein called the C. I. O., appeared and participated. 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. Local 272 has requested an opportunity for oral argument before the Board. We perceive no necessity for oral argument in the instant proceeding. Accordingly, the request is hereby denied. The

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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

Lima Locomotive Works, Incorporated, is a Virginia corporation, engaged at a plant in Lima, Ohio, in the manufacture of locomotives, tanks, and ordnance supplies. During the year ending December 31, 1943, the Company purchased raw materials consisting of steel, coal, iron, coke, and mill supplies, valued in excess of \$60,000,000, of which approximately 50 percent was shipped to the Company's plant from points outside the State of Ohio. During the same period the Company sold \$90,688,476.84 worth of finished products, of which over 50 percent was shipped to points outside the State of Ohio.

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 Molders & Foundry Workers Union of North America, Local #272, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 106, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

Local 272 is seeking to segregate from the plant-wide production and maintenance unit established by the Board in a prior representation proceeding¹ all employees in the Foundry Department of the Company's Lima, Ohio, plant, including molders, coremakers, cupola and furnace men, laborers, and all other employees engaged in the production of castings, but excluding maintenance men, crane men, clerical, and supervisory employees. It contends that these Foundry Department employees comprise a separate appropriate bargaining unit. The C. I. O. contends that the unit proposed by Local 272 is

¹ *Matter of Lima Locomotive Works, Inc.*, 46 N. L. R. B. 813.

not appropriate and therefore the petition should be dismissed.² The Company takes a neutral position with respect to the appropriate unit.

Bargaining history

On October 25, 1937, pursuant to the results of a consent election conducted under the supervision of the Board, Metal Trades Department of the American Federation of Labor, herein called the M. T. D., and a number of its affiliated organizations, including International Molders Union of North America, the predecessor of International Molders & Foundry Workers Union of North America which is the parent organization of Local 272, both of which Internationals are hereinafter referred to as the International, entered into a collective bargaining contract with the Company which covered all employees comprising the unit set forth in the consent election agreement, namely, "all hourly rate employees of the Company . . . with exception of supervisors, foremen, assistant foremen, clerical workers and salaried employees." The contract provided for an "Executive Shop Committee," comprised of a chairman and one member from each organization. It also provided for seniority on a department-wide craft basis. All other provisions such as hours of employment, overtime, vacations, and other conditions of employment generally covered all employees, except pattern makers. This agreement continued in effect until the M. T. D. and its affiliated organizations entered into a similar agreement on October 25, 1939, which amended the prior contract in certain respects and was to remain in effect for 1 year. The International was not one of the signatories to this latter contract. On October 28, 1940, the M. T. D., "all affiliated organizations of the American Federation of Labor," and the Company executed a third master contract covering the employees of the Company included within the previous contract. The International did not sign this agreement.

The International maintained a local in the Company's plant from 1937 to 1939, at which time it became defunct due to the large number of lay-offs in the Foundry Department. Local 272 received its charter April 14, 1941, and on June 1, 1941, entered into an agreement with the Company providing for certain minimum wages to be paid foundry employees and certain other conditions of employment. This agreement was a supplement to the master contract of October 28, 1940.

On June 18, 1941, the parties to the master contract of 1940 and Local 272 executed a supplemental contract amending the provisions of the master contract in certain respects. On September 27, 1941, the

² The C. I. O. also contends that it has a collective bargaining contract which constitutes a bar to this proceeding. Since we hereinafter dismiss the petition on the ground that the unit sought by the Molders is inappropriate, we find it unnecessary to rule upon the question of whether the C. I. O.'s contract is a bar.

Company, the M. T. D., and "affiliated International Unions" executed another supplemental agreement providing for a closed-shop and dues check-off, and extending the term of the October 28, 1940, contract to October 28, 1942. Local 272 was one of the signatories to this agreement. During this entire period of collective bargaining various of the organizations affiliated with the M. T. D. executed separate agreements with the Company concerning the conditions of employment of their respective members. Each of these agreements was termed a supplemental contract to the master agreement then in effect. Collective bargaining under all agreements was carried on by the various craft organizations which were affiliated with the M. T. D. through the general shop committee established by the master contract then in effect.

On June 27, 1942, the C. I. O. petitioned for a plant-wide production and maintenance unit at the Company's Lima, Ohio, plant.³ The Board ordered a hearing on this petition and duly served all signatories to the "General Metal Trades Agreement of October 28, 1940" and the subsequent supplemental agreements with Notice of Hearing. Counsel for M. T. D. and its affiliated organizations in that proceeding specifically stated on the record, "I represent each of the affiliated unions." At the hearing in that case the parties stipulated that the appropriate unit should be the same as the bargaining unit set forth in the September 7, 1941, supplement to the General Metal Trades Agreement of October 28, 1940, with the additional exclusion of pattern makers. The unit thus found appropriate by the Board was "all employees of the Company," except "superintendent, assistant superintendents; all general, assistant, and working foremen, demonstrators and instructors, and all other persons working in a supervisory capacity, including those having the right to hire or discharge; all employees employed in the main office building including engineering and drafting room employees, excepting service employees; all office employees employed in the various departmental offices, including store room and shipping, office clerks, shop clerks, and timekeepers, employment clerks; price-setting clerks, tool draftsmen, clerks in the maintenance engineer's office and tool supervisor's office, and employees in the blueprint room; all employees employed at branch offices and traveling representatives of the Company, including salesmen, service men, material tracers, and locomotive messengers; chief engineer in power plants, plant protection employees, hospital and first-aid employees, garage attendant, inspectors, chemists and laboratory employees, and professional employees, and pattern makers."

On April 13, 1943, pursuant to the results of the election directed by the Board in the prior representation proceeding, the Board certi-

³ *Matter of Lima Locomotive Works, Inc.*, 46 N. L. R. B. 813.

fied the C. I. O. as the exclusive bargaining representative of the Company's employees within the unit found to be appropriate. Thereafter, the Company and the C. I. O. entered into a collective bargaining contract effective April 1, 1943, and to remain in effect for 1 year and "thereafter, until nullified, modified, or amended as herein provided. Should either party hereto on or after one (1) year from the date hereof desire to nullify, modify, or amend this agreement, thirty (30) days notice in writing shall be given by the party seeking to nullify . . . to the other party." This contract covered the employees within the unit found appropriate by the Board. The record indicates that during the period the C. I. O. has been the certified representative of the Company's production and maintenance employees, the employees in the Foundry Department have participated in a number of benefits secured for them by the C. I. O. A list of employees in the Foundry Department who are current dues-paying members of the C. I. O., introduced into evidence at the hearing, contains the names of 100 persons whose names appear on the Foundry Department pay roll of July 7, 1944, which lists the names of 165 employees.

From the foregoing facts it appears that, prior to the advent of the C. I. O., collective bargaining among the Company's employees was conducted through the M. T. D. on a plant-wide unit basis with each affiliated organization of the M. T. D. servicing its own members and possessing the right to bargain on their behalf. However, subsequent to the representation proceeding in 1943, as a result of which the C. I. O. became the certified representative of the Company's employees, collective bargaining has been conducted on the basis of the plant-wide production and maintenance unit which the Board found to be appropriate pursuant to the stipulation entered into by the parties to that proceeding. Inasmuch as the Board's determination in the prior case of the appropriateness of a plant-wide unit, including Foundry Department employees, was based, at least in part, upon the agreement of all parties thereto, including the Company, the C. I. O., and the M. T. D., representing all its affiliated organizations, one of which was Local 272, since the C. I. O. has bargained for over a year on the basis of such a unit, and since nothing has occurred subsequent to the Board's determination in that case to indicate the inappropriateness of the plant-wide unit, we see no reason to disturb it. Accordingly, we find that the unit requested by Local 272 is inappropriate for the purposes of collective bargaining.

IV. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Since, as stated in Section III, above, the bargaining unit sought to be established by Local 272 is inappropriate, we find that no question

affecting commerce has arisen concerning the representation of employees of the Company in an appropriate bargaining unit.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Lima Locomotive Works, Incorporated, Lima, Ohio, filed by International Molders & Foundry Workers Union of North America, Local #272 (AFL), be, and it hereby is, dismissed.