

In the Matter of CONTINENTAL FOUNDRY & MACHINE COMPANY and
UNITED STEELWORKERS OF AMERICA, C. I. O.

Case No. 6-R-976.—Decided September 12, 1944

Mr. David Wyman, of Wheeling, W. Va., and *Mr. W. J. Hebard*, of East Chicago, Ind., for the Company.

Mr. Philip M. Curran, of Pittsburgh, Pa., and *Mr. William W. Kesler*, of Wheeling, W. Va., for the U. S. A.

Mr. H. I. Smith, of Pittsburgh, Pa., for the I. A. M.

Mr. John Swan, of Philadelphia, Pa., and *Mr. Adam J. Myers*, of Mansfield, Ohio, for the Molders.

Mr. Paul A. Gareis, of Pittsburgh, Pa., and *Mr. C. D. Madigan*, of Cleveland, Ohio, for the P. M. L.

Mr. Pat Mingarelle, of Fairmont, W. Va., and *Mr. William Donahue*, for District 50.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, C. I. O., herein called the U. S. A., alleging that a question affecting commerce had arisen concerning the representation of employees of Continental Foundry & Machine Company, Wheeling, West Virginia, 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 Wheeling, West Virginia, on July 13, 1944. The Company; the U. S. A.; International Association of Machinists, herein called the I. A. M.; International Molders and Foundry Workers Union of North America, herein called the Molders; Pattern Makers League of North America, herein called the P. M. L.; and District 50, United Mine Workers of America, herein called District 50, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The

rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Continental Foundry & Machine Company, a Delaware corporation, has its principal office at East Chicago, Indiana, and owns and operates plants at East Chicago, at Coraopolis, Pennsylvania, and at Wheeling, West Virginia. Only the Peninsula plant in Wheeling, West Virginia, is involved in this proceeding.¹ At that plant, the Company is engaged in the manufacturing of rough and machined steel castings, steel rolls, and rolling mill and other miscellaneous machinery. Annually, the Company produces approximately 30,000 tons of such items at the Peninsula plant, more than 95 percent of which is shipped to points outside the State of West Virginia. The raw materials used annually by the Company at the Peninsula plant have a value of approximately \$4,000,000, of which at least 90 percent represents the value of raw materials shipped to the plant from points outside the State of West Virginia.

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 Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

Pattern Makers League of North America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

¹ The Company also has a small plant at Warwood, West Virginia, which is not involved herein.

III. THE QUESTION CONCERNING REPRESENTATION

On April 6, 1944, and again on June 6, 1944, the U. S. A. wrote a letter to the Company requesting a conference to negotiate a collective bargaining contract. To both requests, the Company replied, in effect, that its employees were already covered by a contract and that it could not meet with the U. S. A. in the absence of certification by the Board. The contract to which the Company had reference was to expire on August 1, 1944. None of the parties contends that the contract precludes a present determination of representatives.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the U. S. A. represents a substantial number of employees in the unit it alleges to be appropriate.²

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 DETERMINATION OF REPRESENTATIVES

A. *Contentions of the parties*

The U. S. A. and District 50 are in agreement that the appropriate unit should be a single unit comprising all production and maintenance employees of the Company's Peninsula plant, excluding policemen, watchmen, clerical and salaried employees, foremen, assistant 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.

The P. M. L. seeks a separate unit of all pattern makers, pattern checkers, and pattern maker apprentices, excluding the foremen, the pattern storage leader, pattern carriers, and handymen.

The I. A. M. contends for a separate unit of all tool and die makers, journeymen machinists, machine assemblers and fitters, machinist helpers, electric welders, acetylene burners, chippers, specialists, roll

² See following table:

Type of unit	Number employees in unit	Representation showing*	
		U S A.	Dist 50
Pattern makers.....	10	0	0
Machine shop employees.....	294	84	1
Residuary employees.....	813	367	93
Total production and maintenance employees.....	1,117	451	94

*The P M L, the I A M, and the Molders rely upon their recent contract with the Company to show their respective interests.

grinders, roll turners, roll roughers, roll headers, and apprentices, employed in the three production machine shops of the Company's Peninsula plant, including the gang leader, and machine shop inspectors, but excluding chainmen, laborers, the machine shop estimator, blacksmiths, blacksmiths helpers, shop clerks, the weighman, and the blacksmith foreman, the labor leader, the supervisor, 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.

The Molders contends that all production and maintenance employees not sought by the P. M. L. or the I. A. M. constitute a separate appropriate unit.

The Company takes no position.

B. Considerations affecting scope of unit

The production and maintenance employees at the Peninsula plant are divided among the following listed 12 departments:

<i>Department</i>	<i>No of employees</i>
Pattern.....	21
Molding.....	213
Core.....	46
Store Room.....	4
Annealing and Heat Treating.....	18
Metallurgical.....	11
Melted Metals.....	73
Cleaning and Finishing.....	294
Foundry Section Employees.....	659
Machine Shop.....	282
Inspection.....	16
Maintenance.....	159
Plant Protection.....	19

As shown in the above listing, 7 of the 12 departments comprise the foundry section of the plant. All the production departments except the Pattern Department are situated in a single building. The Pattern Department occupies a separate building nearby. Production operations normally commence with the Pattern Department, flow through the various foundry departments, and then through the Machine Shop Department. This indicates that the plant is integrated, and thus adaptable to bargaining on a plant-unit basis.

On the other hand, there is a certain degree of independence among the pattern shop, the foundry section, and the machine shop. Thus, over one-half the patterns used in the foundry section are supplied by customers, and some patterns are made in outside shops under subcontracts. Likewise, only about 10 to 20 percent of the output

which we have noted above tend to indicate that either a single, over-all unit or separate units may be found appropriate, we shall, with one exception, make no final determination as to the appropriate unit, pending an indication of the desires of the employees sought to be set off in separate units.

The exception to which we have reference concerns the unit sought by the P. M. L. The record indicates that this unit comprises a segregated, skilled craft group typical of those which the P. M. L. represents throughout the country. No other organization desires to appear on any ballot where the pattern makers would be given the opportunity to vote their preference for a separate unit, nor has any other organization made a showing of interest among the pattern makers.

Because of these latter facts, the identity of the Company's pattern makers as a craft group, and the absence of any dispute concerning the composition of the group, we find that all pattern makers, pattern checkers,⁵ and pattern maker apprentices employed by the Company at its Peninsula plant, excluding pattern carriers, handymen, and the foreman, the pattern storage leader, 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.⁶

C. Composition of the voting groups

1. Machine shop group.

Unlike the Company's pattern makers, whom we have found to comprise an appropriate unit, the employees whom the I. A. M. seeks to include in a separate unit are not all highly skilled craftsmen. We have particular reference to specialists and to chippers, although there may be other categories not comparable in skill to machinists. We do not regard the unit sought by the I. A. M., therefore, as a craft unit. Moreover, as we have indicated heretofore, the Company's production operations appear to be divisible into foundry work and machine work, thus indicating that separate departmental or divisional units may be appropriate for collective bargaining purposes. Accordingly, we shall set up a departmental machine shop voting group rather than a craft group of machinists.

The Company's Machine Shop Department consists of three production machine shops, namely, the roll machine shop, the machine

⁵ The Company employs three pattern checkers, one of whom is considered the leader. The parties all agree to include him. The record is clear, and we find, that he is not a supervisory employee within our customary definition.

⁶ See *Matter of The American Rolling Mill Company*, 55 N. L. R. B. 231.

of the foundry section goes to the machine shop, the remainder being shipped directly to customers. The machine shop receives from 75 to 90 percent of its work from the foundry section, but during the early 1930's, it was frequently in partial operation although the foundry section was closed down. The Company states that the foundry section could function without the machine shop.

The collective bargaining history at the Peninsula plant dates back to the years between 1910 and 1916 when the P. M. L., the I. A. M., and the Molders each entered into oral or written craft agreements with predecessors of the Company. These agreements were continued, in effect until the economic depression of the 1930's, after which collective bargaining activities appear to have been discontinued for some time. On August 29, 1941, the Company entered into a consent cross-check agreement with the "Metal Trades Department, A. F. L." As a result thereof, the "Metal Trades Department, A. F. L." was found to represent a majority of the Company's production employees at the Peninsula plant. On October 23, 1941, the Company and the "Metal Trades Department of the American Federation of Labor," representing the P. M. L., the I. A. M., and the Molders, entered into a contract covering the Company's production and maintenance employees. The termination date of the contract was August 1, 1942, subject to an automatic renewal clause. The contract stated that the Company recognized the P. M. L., the I. A. M., and the Molders "as the sole and exclusive collective bargaining agency" for its employees at the Peninsula plant, and was signed by officers of the three unions. The record indicates that these officers signed for their respective unions and that no one signed for the Metal Trades Department.³

Article VI of the contract provides for the handling of grievances by a shop committee consisting of three representatives each from the foundry section and the machine shop, and one from the pattern shop. In actual practice, however, each union has separately handled grievances of its members.

With some amendments, the original 1941 contract has twice been renewed.

We conclude that the collective bargaining history, as outlined above, is too inconclusive, in and of itself, to afford a basis for the determination of the issue whether a single plant unit or separate departmental or craft units are appropriate.⁴ Since the other considerations

³ The P. M. L. denies that there ever was a Metal Trades Department, and, accordingly, argues that the contract never had a legal existence. The Molders takes the position that the contract was negotiated by representatives of the three craft unions, and that there was never any special representative of the Metal Trades Department present. The I. A. M. contends that the contract was merely a federated agreement.

⁴ See *Matter of Erie Concrete & Steel Supply Co., Ship Building Division of Erie, Pa.*, 55 N. L. R. B. 1124, and cases cited therein.

shop, and the hull machine shop. All three shops are under the same supervision and occupy adjoining bays in the plant. The only non-clerical, non-supervisory employees in this department whom the I. A. M. would exclude from its proposed unit are *blacksmiths, blacksmith helpers, chainmen, and laborers*. Since we are establishing a departmental voting group, we shall include these employees in the group, inasmuch as they are engaged in production.⁷

The I. A. M. seeks to include the *machine shop inspectors*. These employees, although engaged in inspecting and rejecting finished work in the machine shop, are not under machine shop supervision, but are part of the Company's Inspection Department. Since they are not part of the Machine Shop Department, we shall not include them in the machine shop voting group, but shall include them in the residual voting group hereinafter established.

Some question arose at the hearing as to the disposition of *maintenance machinists*. These employees are part of the Maintenance Department. The I. A. M. and the Company take no position on whether they should be in the same unit as machine shop employees; District 50 and the Molders contend that they should be included in the residual voting group. Inasmuch as they are in the Maintenance Department, we shall not include maintenance machinists in the machine shop voting group, but shall include them in the residual voting group.

Labor leader in machine shop: The U. S. A. would exclude this employee. He is in charge of one to three men with whom he works, but has no power to make effective recommendations affecting their status and is not considered by the Company as a supervisory employee. We find that this employee is not a supervisory employee within our customary definition, and we shall include him in the machine shop voting group.

2. Residual group

In general, the residual voting group would seem to comprise all departments heretofore listed excepting the Pattern Department, the Machine Shop Department, and the Plant Protection Department, the latter being excluded by agreement of the parties. Within this group, however, the parties are not in agreement as to the disposition of the several categories of employees set out below.

Metallurgical Department: This is one of the seven departments in the foundry section. The following employees are found therein: metallurgical technicians, chemists, chemist learner, roll coordinator, and dark room technician. The parties are agreed to exclude the metallurgical technicians and the dark room technician as technical

⁷ The I. A. M. indicated a willingness to represent such employees if the Board decided to include them in the unit.

employees. All but District 50 would also exclude the chemists, and all but District 50 and the U. S. A., the chemist learner, as technical employees; all excepting the U. S. A. would exclude the roll coordinator as a clerical employee. Chemists analyze openhearth heats before they are poured, and, after pouring, they make carbon tests. They are either college graduates or have had laboratory training. The chemist learner is, in effect, an apprentice. The roll coordinator works directly under the head metallurgist. He keeps detailed records on the production of rolls. We shall exclude all employees in the metallurgical department from the residual voting group because of the technical or clerical nature of their work.

Labor leader in the molding department: The record is not clear as to the functions of this employee, but it appears that he is in charge of 5 to 10 men with whom he occasionally works. He has power to make effective recommendations affecting the status of employees under him. All the parties but the Molders would exclude him. We find that this employee is a supervisory employee within our customary definition, and we shall exclude him.

Electrician "leader": One of the Company's 12 electricians, Paul Bonenberger, leads a small group of electricians not over 10 percent of his working time. He has no power to make effective recommendations affecting the status of employees under him. He is paid 20 cents more per hour than the average electrician employed by the Company. The Molders would include him, and the U. S. A. would exclude him. We find that the electrician "leader" is not employed in a supervisory capacity within our customary definition, and we shall include him in the residual voting group.

Shake-out leaders are over approximately five men with whom they work. They have power to make effective recommendations affecting the status of the men under them. Only the Molders would include them. We find that shake-out leaders are supervisory employees within our customary definition, and we shall exclude them from the residual voting group.

The pattern storage leader is in charge of two pattern department laborers with whom he works. He has the power to make effective recommendations affecting the status of these employees. The Molders would include him, while the U. S. A., District 50, and the Company take no position. We find that the pattern storage leader is a supervisory employee within our customary definition, and we shall exclude him from the residual voting group.

Assistant foremen: The Company has four assistant foremen, one in the Molding Department, one in the Core Department, and two in the Maintenance Department. Since they all have power to make effective recommendations affecting the status of employees under them, we shall exclude them from the residual voting group.

Chief inspectors and assistant chief inspectors: The Company has a chief machine shop inspector, a chief foundry inspector, and an assistant chief foundry inspector. Each has power to make effective recommendations affecting the status of inspectors under their supervision. We shall, therefore, exclude them from the residual voting group.

A *shipping clerk* is located in the Cleaning and Finishing Department where he keeps records of the weights of castings and is engaged entirely in paper work. Only the Molders desires to include him. Because the shipping clerk is engaged entirely in work of a clerical nature, and two of the interested labor organizations oppose his inclusion, we shall exclude him from the residual voting group.

Shop clerk in the Molding Department: This employee is engaged in book work for the superintendent of the foundry. He keeps records of castings poured and conditions surrounding the pouring. All the parties excepting the Molders would exclude him. We shall exclude the shop clerk in the Molding Department from the residual voting group for the same reason we are excluding the shipping clerk, above.

D. *Concluding Findings*

In view of our findings with regard to the Company's machine shop employees, we shall make no final determination at this time of a unit as respects the production and maintenance employees. We shall direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among the employees in the following voting groups and appropriate unit who were employed during the pay-roll period immediately preceding the date of our Direction of Elections, subject to the limitations and additions set forth therein: (1) all employees in the Machine Shop Department at the Peninsula plant, including blacksmiths, blacksmith helpers, chainmen, laborers, and the gang leader, but excluding the machine shop estimator, shop clerks, the weighman, and the blacksmith foreman, the labor leader, the supervisor, 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 the U. S. A., the I. A. M., or District 50; (2) all remaining production and maintenance employees at the Peninsula plant, including storeroom clerks, weighmen in the Melted Metals Department,⁸ machine shop and foundry inspectors, machinists in the Maintenance Department, the chipper leader in the Clean-

⁸ In contrast to the weighman excluded from the machine shop voting group, whose work is entirely clerical, the weighmen in the Melted Metals Department perform manual work, and all parties agree to include them.

ing and Finishing Department,⁹ toolroom attendants, heat treaters, heat treater learners, the electrician "leader," the labor leader in the Molding Department, and gang leaders, but excluding timekeepers, the expediter and the assistant to the foundry superintendent in the Maintenance Department, draftsmen, clerical and salaried employees, employees in the Plant Protection Department, employees in the Metallurgical Department, the shipping clerk, the shop clerk in the Molding Department, all pattern makers, pattern checkers, and pattern maker apprentices, and foremen, assistant foremen, assistant master mechanic in the Maintenance Department, the inspection leader in the machine shop, chief inspectors, assistant chief inspectors, shake-out leaders, the pattern storage leader, 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 the U. S. A., the Molders, or District 50; and (3) all pattern makers, pattern checkers, and pattern maker apprentices, excluding pattern carriers, handymen, and the foreman, the pattern storage leader, 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 or not they desire to be represented by the P. M. L. Upon the results of the first two elections will depend, in part, our determination of the appropriate unit of production and maintenance employees.

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 Continental Foundry & Machine Company, Wheeling, West Virginia, 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 of Elections, 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 employees who were employed by the Company during the

⁹ The record indicates, and we find, that this employee is not a supervisory employee within our customary definition.

pay-roll period immediately preceding the date of this Direction of Elections, 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections:¹⁰

1. All employees in the Machine Shop Department at the Peninsula plant, including blacksmiths, blacksmith helpers, chainmen, laborers, and the gang leader, but excluding the machine shop estimator, shop clerks, the weighman, and the blacksmith foreman, the labor leader, the supervisor, 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 or America, C. I. O., or by International Association of Machinists, Lodge No. 818, or by District 50, United Mine Workers of America, for the purposes of collective bargaining, or by none;

2. All production and maintenance employees at the Peninsula plant, including storeroom clerks, weighmen in the Melted Metals Department, machine shop and foundry inspectors, machinists in the Maintenance Department, the chipper leader in the Cleaning and Finishing Department, toolroom attendants, heat treaters, heat treater learners, the electrician "leader," the labor leader in the Molding Department, and gang leaders, but excluding timekeepers, the expediter and the assistant to the foundry superintendent in the Maintenance Department, draftsmen, clerical and salaried employees, employees in the Plant Protection Department, employees in the Metallurgical Department, the shipping clerk, the shop clerk in the Molding Department, all pattern makers, pattern checkers, and pattern maker apprentices, and foremen, assistant foremen, assistant master mechanic in the Maintenance Department, the inspection leader in the machine shop, chief inspectors, assistant chief inspectors, shake-out leaders, the pattern storage leader, 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, and all employees included in group 1, above, to determine whether they desire to be represented by United Steelworkers of America, C. I. O., or by International Molders and Foundry Workers Union, Local No. 364, or by District 50, United Mine Workers of America, for the purposes of collective bargaining, or by none, and

¹⁰ The several labor organizations expressed preferences at the hearing that their respective names appear on the ballots as set forth in the Direction of election.

3. All pattern makers, pattern checkers, and pattern maker apprentices, excluding pattern carriers, handymen, and the foreman, the pattern storage leader, 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 or not they desire to be represented by Pattern Makers League of N. A., affiliated with the A. F. L., for the purposes of collective bargaining.

[See *infra*, 58 N. L. R. B. 692 for Amendment To and Order Correcting Decision and Direction of Elections.]