

In the Matter of THE ANSTICE COMPANY, INC. and UNITED STEEL-
WORKERS OF AMERICA, (CIO)

*Cases Nos. 3-R-846 and 3-R-870 respectively.—Decided
September 27, 1944*

*Messrs. T. Carl Nixon and Arthur L. Stern, both of Rochester, N. Y.,
for the Company.*

Mr. John G. Strobel, of Rochester, N. Y. for the United.

*Mrs. H. W. Clements and Mr. H. W. Clements, both of Rochester,
N. Y., for the Molders.*

*Messrs. H. J. Smith and J. Paul Kelsey, both of Buffalo, N. Y., for
the IAM.*

Mr. Joseph C. Wells, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, (CIO), herein called the United, in Case No. 3-R-846, alleging that a question affecting commerce had arisen concerning the representation of employees of The Anstice Company, Inc., Rochester, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Rochester, New York, on August 21, 1944. The Company, the United, International Molders and Foundry Workers of North America, Local No. 11, (AFL), herein called the Molders, and International Association of Machinists (AFL), herein called the IAM, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Certain documents were introduced in evidence and made a part of the record, whereupon the Company, the United, and the Molders stipulated that the issues in the case should be resolved by a consent election to be conducted by the Board among the employees of the Company involved in the proceeding. None of the parties desiring to present further evi-

dence with respect to the issues, the hearing was closed. Prior to the time agreed upon for conducting the consent election, the United filed its petition in Case No. 3-R-870, whereupon the Company withdrew its above-mentioned stipulation to the consent election. The Board consolidated the cases and provided for a second appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. The latter hearing was held at Rochester, New York, on September 11, 1944. The Company, the United, the Molders, and the IAM, 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 Company appeared for the sole purpose of expressing its refusal to proceed with the hearing until such time as the Board makes a final determination in Case No. 3-C-749, involving charges of unfair labor practices filed by the United against the Company, and moved that the petitions be dismissed.¹ For reasons stated in Section IV, *infra*, the motion is denied. The rulings of the Trial Examiner made at both hearings 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

The Anstice Company, Inc., is a New York corporation engaged in the manufacture of castings, dish washers, vegetable peelers, and canning equipment. During the first 6 months of 1944, the Company purchased raw materials for use at its Rochester, New York, plant, having a value in excess of \$25,000, of which a substantial percentage represents shipments from points outside the State of New York. During the same period the Company's products at the Rochester plant had a total value in excess of \$25,000, of which a substantial percentage represents the value of products delivered to places outside the State.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

¹ The Company then withdrew from the hearing. The IAM also withdrew shortly thereafter, having expressed no interest in the proceeding.

International Molders and Foundry Workers of North America, Local No. 11, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to either the United or the Molders as the exclusive bargaining representative of its employees.

Statements of the Field Examiner, introduced into evidence at the hearings, indicates that the United and the Molders each represents a substantial number of employees in the units alleged by each union 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

The United and the Molders agree in Case No. 3-R-846 that the production and maintenance employees in the foundry at the Company's Rochester plant, excluding truck drivers, office, clerical, plant protection, and supervisory employees, constitute a single appropriate bargaining unit.

In Case No. 3-R-870, the United seeks a bargaining unit comprised of production and maintenance employees, excluding truck drivers, office, clerical (but not shipping clerks), and supervisory employees in the machine shop at the Company's Rochester plant.

As stated above, the Company participated in the hearing on the consolidated cases, only to make its motion to dismiss the petitions, and, therefore, made no contention with respect to the appropriateness of the bargaining units sought by the petitions herein.

The Company's plant at Rochester consists of two buildings located approximately 75 feet apart. The foundry occupies one of these buildings and the machine shop the other. About 85 percent of the production of the foundry consists of airplane parts, and the remaining production is of vegetable peelers. The machine shop employees are primarily engaged in machining and finishing the vegetable peelers

² In Case No. 3-R-846, the Field Examiner reported that the United submitted 97 authorization cards, of which 92 were dated July 1944, and 5 were dated June 1944; that the Molders submitted 69 authorization cards, of which 7 were dated June 1944, 1 dated May 1944, 60 dated April 1944, and 1 dated March 1944; and that the Company employed 155 workers in the unit sought by the Unions in this case.

In Case No. 3-R-870, the Field Examiner reported that the United submitted 36 application cards; that 34 of these bore names of employees on the Company's pay roll for the period ending August 26, 1944; that all cards submitted were dated August 1944; and that there are approximately 79 employees in the unit sought in this case.

produced in the foundry. Other products of the foundry are shipped to customers who perform the necessary machining and finishing operations at their plants. Both the foundry and the machine shop employees are under the supervision of the general superintendent who is assisted in this supervision by foremen in the foundry and other foremen in the machine shop. The employees at the foundry and the machine shop use different time clocks, and have been grouped separately for company picnics. Employees at both the foundry and machine shops are paid on an hourly basis, and receive similar rates of pay for similar skills. There is nothing in the record to indicate that employees are transferred frequently between the two divisions of the plant, either temporarily or permanently.

In view of the foregoing circumstances it is apparent that collective bargaining among the Company's employees could be conducted appropriately either in a plant-wide or in separate units comprised of employees in the foundry and the machine shop, respectively.³ Absent a history of collective bargaining determinative of the question, the Board frequently, in such a situation, bases its decision in part upon the desires of the employees in a self-determination election. We shall, therefore, make no final determination of the appropriate unit, or units, at this time but shall direct that the question concerning representation which has arisen be resolved, in part, by separate elections by secret ballot among the employees in the foundry and machine shop, respectively. The employees in the foundry group shall choose whether they desire to be represented by the United, the Molders, or by neither; the employees in the machine shop group shall choose whether or not they desire to be represented by the United. If the United is chosen as the bargaining representative of the employees in both voting groups, we shall find a single unit appropriate; if, however, the United does not win the election in both voting groups, each group shall constitute a separate and distinct unit.

Prior to the hearing on the consolidated cases, but subsequent to the hearing on Case No. 3-R-846, the United filed with the Board charges alleging the Company to have engaged in unfair labor practices.⁴ However, at the hearing on the consolidated cases, before the Company's withdrawal therefrom, both the United and the Molders waived in writing any right to protest any elections held on any ground set forth in the charges filed in Case No. 3-C-749 by the United. Under

³ *Matter of Wright Aeronautical Corporation*, 45 N. L. R. B. 1104, *Matter of France Foundry & Machine Company*, 51 N. L. R. B. 1395, *Matter of Ingersoll-Rand Company*, 55 N. L. R. B. 14, *Matter of Continental Foundry & Machine Company*, 58 N. L. R. B. 213.

Although the United, the only Union involved seeking to represent all production and maintenance employees at the Company's Rochester plant, petitioned for two separate bargaining units, the record affords no persuasive reason so to divide these employees in the event the majority in both the foundry and machine shop choose the United as their representative.

⁴ Case No. 3-C-749.

these circumstances, we perceive no reason to delay further a determination of representatives.

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 groups described in the Direction of Elections herein, who were employed during the pay-roll period immediately preceding the date of the Direction, subject to the limitations and additions set forth therein.

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 The Anstice Company, Inc., Rochester, New York, 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 Third 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 groups of employees of the Company 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 those who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, as well as all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(1) All production and maintenance employees of the Company employed at its foundry at the Rochester plant, excluding truck drivers, office, clerical, and plant-protection employees, to determine whether they desire to be represented by United Steelworkers of America, (C. I. O.), or by International Molders and Foundry Workers of North America, Local No. 11, (A. F. L.), for the purposes of collective bargaining, or by neither;

(2) All production and maintenance employees of the Company employed at its machine shop at the Rochester plant, including shipping clerks, but excluding office clerical employees, and truck drivers, to determine whether or not they desire to be represented by United Steelworkers of America, for the purposes of collective bargaining.