

IN the Matter of PITTSBURGH PLATE GLASS COMPANY and GLASS, CERAMIC AND SILICA SAND WORKERS OF AMERICA, AFFILIATED WITH CONGRESS OF INDUSTRIAL ORGANIZATIONS

*Case No. 15-R-1213.—Decided November 14, 1944*

*Mr. J. E. Hooks*, of Memphis, Tenn., and *Messrs. Harold W. Hawes* and *Clarence J. Moser*, of Pittsburgh, Pa., for the Company.

*Mr. W. A. Copeland*, of Memphis, Tenn., for the CIO.

*Mr. Harry Pederson*, of New York City, for Local No. 1368.

*Mr. M. R. Futhey*, of Memphis, Tenn., for Local No. 49.

*Miss Ruth Rusch*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Glass, Ceramic and Silica Sand Workers of America, affiliated with Congress of Industrial Organizations, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Pittsburgh Plate Glass Company, Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at Memphis, Tennessee, on October 6, 1944. The Company, the CIO, and Glass Workers Union, Local No. 1368, affiliated with Brotherhood of Painters, Decorators and Paperhangers, A. F. of L., herein called Local No. 1368, appeared and participated.<sup>1</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

<sup>1</sup> M. R. Futhey appeared at the hearing on behalf of Painters Local Union No. 49, A. F. of L. Glass Glaziers Local Union No. 242, which was formerly a part of Local No. 49, has a contract with the Company covering its glaziers. While the record failed to disclose any reason for Futhey's appearance, it is presumed that his purpose was to protect the interest of Local No. 242 in the glaziers.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The Company is a Tennessee corporation and a subsidiary of the Pittsburgh Plate Glass Corporation of Pennsylvania. It is engaged in the distribution and installation of mirror, plate glass, and other glass products. In the course of a year, the Company sells products amounting to more than \$800,000 in value, of which approximately 33 percent is shipped to points outside the State of Tennessee.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

Glass, Ceramic and Silica Sand Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Glass Workers Union, Local No. 1368, Brotherhood of Painters, Decorators and Paperhangers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of its warehouse employees until the CIO has been certified by the Board in an appropriate unit.

Local No. 1368 maintains that the contract which it has with the Company is a bar to the present proceeding. The contract was entered into on September 26, 1942, and was to continue for a year and from year to year thereafter unless notice to terminate was given 60 days prior to the anniversary date. In the instant case, the CIO notified the Company of its interest on July 19, 1944, prior to the automatic renewal date of the contract. We find that timely notice was given and that the contract in question is not a bar to a determination of representatives.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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<sup>2</sup> The Field Examiner reported that the CIO submitted 18 membership cards, 11 of which bore the names of persons listed on the Company's pay roll of August 24, 1944, which contained the names of approximately 23 employees in the appropriate unit. The cards were dated between May and August 1944.

Local No. 1368 did not present any evidence of membership, but relies on its contract as proof of its representation.

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 parties agree in general that the unit should be composed of the warehouse employees at the Company's distributing branch and warehouse in Memphis, Tennessee, and that supervisory, office, clerical, and selling employees and glaziers<sup>3</sup> should be excluded. Local No. 1368 maintains that in conformity to its contract with the Company only those warehouse employees who handle glass should be included, and accordingly, it would exclude from the unit a group of four employees in the warehouse who handle paint stock. The CIO contends that all non-supervisory warehouse employees, including the paint stock handlers, should comprise the unit.

The Company's employees at its Memphis establishment are classified administratively into two major groups, one consisting of the glaziers, and the clerical and selling employees who are excluded from the unit by the agreement of all parties; the other including all warehouse employees under the supervision of a superintendent. The warehouse employees are divided into five groups, each of which is under the supervision of a foreman or the shipping clerk as the case may be. The first group cuts the glass, the second prepares the glass, the third repairs glass in automobiles, the fourth handles paint stock, and the fifth is the shipping department. It is the fourth group as to which there is a dispute. The employees in this group work in the paint stock room, which is part of the warehouse, picking orders, packing, shipping, and handling all other work in connection with paint sales. Local No. 1368 desires to exclude them from the unit because they are not glass workers. However, these employees are part of the warehouse force; the unit proposed by Local No. 1368 includes the receiving and shipping employees who, also, do not appear to be specialized glass workers; and the four paint stock handlers will be unrepresented for collective bargaining purposes unless they are included in the unit of other warehouse employees. Considering these facts, we see no persuasive reason for excluding them.

In addition to the foremen and the shipping clerk, we shall exclude the assistant shipping clerk from the unit as a supervisory employee.

We, therefore, find that all of the Company's warehouse employees including the group which handles the paint stock, but excluding salesmen, sales clerks, glaziers, office and clerical employees, the shipping clerk, the assistant shipping clerk, and all other supervisory employees with authority to hire, promote, discharge, discipline, or

<sup>3</sup> The glaziers are covered by a contract between the Company and Glass Glaziers Local Union No. 242.

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 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. We shall make no provision for Local No. 49 to appear on the ballot since it appeared at the hearing to protect its interest in the glaziers.

Although the CIO and Local No. 1368 requested that they be designated on the ballot as CIO and AFL respectively; we shall deny this request for the reason that such designation is too indefinite for purposes of identifying the labor organizations.

#### 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, as amended it is hereby.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pittsburgh Plate Glass Company, Memphis, Tennessee, 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 Fifteenth 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 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 Glass, Ceramic and Silica Sand Workers of America, CIO, or by Glass Workers Union, Local No. 1368, AFL, for the purposes of collective bargaining, or by neither.