

In the Matter of ZENITH OPTICAL COMPANY and AMERICAN FLINT
GLASS WORKERS' UNION OF NORTH AMERICA, A. F. OF L.

Case No. 9-R-1600.—Decided November 27, 1944

Messrs. E. A. Marshall and J. A. Wills, of Huntington, W. Va., for the Company.

Mr. Edward Shay, of Star City, W. Va., for the A. F. of L.

Mr. B. T. Wolford, of Huntington, W. Va., for the C. I. O.

Mr. Louis R. Mercado, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by American Flint Glass Workers' Union of North America, A. F. of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Zenith Optical Company, Huntington, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before James A. Shaw, Trial Examiner. Said hearing was held at Huntington, West Virginia, on October 20, 1944. The United Optical Workers' Union, Local 1326—C. I. O., herein called the C. I. O., filed a motion to intervene with the Regional Director prior to the hearing, which motion was referred to the Trial Examiner for consideration at the hearing. The motion was granted by the Trial Examiner. The Company, the A. F. of L., and the C. I. O. appeared and participated. 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.

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 partnership engaged in the business of processing optical glass¹ for the United States Army and Navy and in the

¹ The processing consists chiefly of grinding the optical glass

manufacture of glass for radio and radar tubes in separate plants located in Huntington, West Virginia. The Company's optical glass processing operations are conducted in a plant comprising 3 buildings where about 900 persons, largely unskilled, are employed; these operations are regarded strictly as a wartime industry. During the past 12-month period the Company delivered processed optical glass, valued in excess of \$500,000, to the Army and Navy at points outside the State of West Virginia.

The Company's glass manufacturing business was started as a permanent venture in May 1944, in a separate building on Thirteenth Street in Huntington, West Virginia, where about 28 persons, mostly highly skilled, are employed.² During the past 12-month period the Company purchased, for its glass manufacturing operations, materials consisting chiefly of sand, soda ash, lime, and other chemicals, valued in excess of \$10,000, of which 90 percent originated from points outside the State of West Virginia; during the same period it sold manufactured glass products valued in excess of \$10,000, of which 90 percent was delivered to 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

American Flint Glass Workers' Union of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Optical Workers' Union Local 1326, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the A. F. of L. as the exclusive representative of the production and maintenance employees engaged in the glass manufacturing enterprise at the Company's Thirteenth Street plant, on the ground that it had a contract with the C. I. O. which covered all of its employees. The Company indicated that if the A. F. of L. were certified by the Board in an appropriate unit, it would grant recognition.

The C. I. O. has represented the Company's employees engaged in the grinding and processing of optical glass since September 29, 1943, at which time the C. I. O. and the Company entered into a contract whereby the Company recognized the C. I. O. as the exclusive bargaining representative "for all its employees in its Huntington, West

² Minor reclamation work is also carried on in the building in which the glass manufacturing operations are conducted.

Virginia, plants." This contract expired in September 1944, and at the time of the hearing, the C. I. O. and the Company were still negotiating a renewal thereof. At the time of its executing of this contract in September 1943, the Company had not contemplated the new glass manufacturing venture and in fact did not start these operations until more than 7 months later. Most of the employees engaged in the Company's glass manufacturing operations are highly skilled in that industry and only a few of the employees engaged in the grinding of optical glass operations were transferred to the glass manufacturing operations, where they were assigned to relatively unskilled jobs. The C. I. O. contends that it represents all of the Company's employees in both the grinding and manufacturing operations, by virtue of the contract and alleged prior history of bargaining and also by virtue of its showing of a substantial interest in the unit proposed by the A. F. of L.³ Upon the entire record, we find that the Company and the C. I. O. did not intend the provisions of the contract to cover employees of the Company in an entirely different industry which was not contemplated at the time the parties signed the contract, and that, in any event, the contract has terminated and is not a bar to this proceeding.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 A. F. of L. contends that the appropriate unit should consist of all the Company's production and maintenance employees in its glass manufacturing operations in the Thirteenth Street plant, exclusive of clerical and supervisory employees. The C. I. O. contends that the appropriate unit should consist of all the Company's production and maintenance employees in both its optical glass processing and glass manufacturing operations, exclusive of supervisory employees. The Company takes no position on the unit.

The evidence establishes that the Company's optical glass processing operations are purely a wartime industry, carried on by unskilled

³ The Regional Director reported that the C. I. O. submitted 13 cards, all of which bore apparently genuine original signatures. The names of 11 persons appearing on the cards were listed on the Company's pay roll of October 3, 1944. The cards were dated: 1943, 3; 1944, 3; undated 5.

⁴ The Regional Director reported that the A. F. of L. submitted 27 cards all of which bore apparently genuine original signatures; that the names of 21 persons appearing on the cards were listed on the Company's pay roll of October 3, 1944, which contained the names of 30 employees in the appropriate unit; and that the cards were dated September 1944, 6; August 1944, 7; undated, 8.

employees, and will be abandoned after the war. The Company's glass manufacturing is a separate business venture and is intended to continue after the war. It is an industry distinct from the optical glass grinding operations and requires highly skilled employees whose interests are entirely different from the employees engaged in the grinding operations. As previously indicated, the contract of the C. I. O. with the Company was not intended to cover the employees engaged in the Company's glass manufacturing venture and it does not indicate a previous bargaining history.

The maintenance employees of the Company in its Thirtieth Street glass manufacturing plant spend much of their time in adjusting and repairing the machinery of the plant and their interests are the same as those of the production employees. We shall include them in the unit.

We find that all of the Company's production and maintenance employees engaged in the manufacture of glass at the Thirteenth Street plant in Huntington, West Virginia, but excluding clerical employees and all 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.

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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

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 Zenith Optical Glass Company, Huntington, West Virginia, 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 Ninth 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 American Flint Glass Workers' Union of North America, A. F. of L., or by United Optical Workers' Union, Local 1326—C. I. O., for the purposes of collective bargaining, or by neither.