

In the Matter of GENERAL METALS CORPORATION and LOS ANGELES
METAL TRADES COUNCIL

Case No. 21-R-2482.—Decided December 26, 1944

Haight, Trippet, and Syvertson, by *Mr. Oscar A. Trippet*, of Los Angeles, Calif., for the Company.

Mr. David Sokol, of Los Angeles, Calif., for the A. F. L.

Katz, Gallagher & Margolis, by *Mr. Charles J. Katz*, of Los Angeles, Calif., for the C. I. O.

Mr. F. R. Doyle, of Pasadena, Calif., for the Die Sinkers.

Mr. Harry Nathanson, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Los Angeles Metal Trades Council, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of General Metals Corporation, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at Los Angeles, California, on October 27, 1944. The Company, the A. F. L., United Steelworkers of America, C. I. O., herein called the C. I. O., and International Die Sinkers Conference, Local 220, herein called the Die Sinkers, 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. At the hearing, the C. I. O. moved to dismiss the petition and the Trial Examiner referred the motion to the Board for determination. For reasons set forth in Section III, *infra*, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded, and availed themselves of, the opportunity to file briefs with the Board. Since the briefs adequately discuss the issues, the C. I. O.'s request for oral argument is denied.

Upon the entire record in the case, the Board makes the following:
59 N. L. R. B., No. 227.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

General Metals Corporation is a California corporation with its principal office and plant located at Vernon, California. It is engaged in the manufacture and sale of forgings and malleable castings. In its operations the Company uses iron and steel as its principal raw material. During the past year the Company purchased 13,000 tons of these raw materials, of which approximately 12,000 tons originated outside the State of California. During the same period it sold products valued at more than \$5,000,000, of which approximately 50 percent was shipped by it to points outside the State of California.

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

II. THE ORGANIZATIONS INVOLVED

Los Angeles Metal Trades Council, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

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

International Die Sinkers Conference, Local 220, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In 1940, following a Decision and Direction of Election issued by the Board,¹ the C. I. O.'s predecessor, "Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 218, through the S. W. O. C.," was certified as the exclusive bargaining representative of all the Company's production and maintenance employees.² That year, and in 1941 and 1943 as well, the Company entered into collective bargaining agreements with the C. I. O. or its predecessor. The last of these agreements, made between the Company and the C. I. O., was dated May 1, 1943. It provided, in part, as follows:

SECTION XII—TERMINATION

If any changes are desired in hours, wages and working conditions established in this Agreement, six (6) weeks prior to the expiration of the term of this agreement, notice shall be

¹ 18 N. L. R. B. 708.

² 20 N. L. R. B. 121.

given in writing by either the Company or the Union. Within ten (10) days after receipt of such notice the parties to this Agreement shall begin negotiations. This Agreement shall remain in effect one (1) year from the date hereof, and thereafter from year to year unless changed or terminated as above.

On March 20, 1944, the C. I. O. sent the following letter to the Company:

This is to notify you under Section 12 of the current Agreement between the United Steelworkers of America and the General Metals Corporation, of our desire to open said Agreement for the purpose of negotiating on the improvements of the Agreement.

We would appreciate it if you would set a date within ten (10) days of the date of this letter for the purpose of discussions of our proposals.

In answer, the Company transmitted a letter to the C. I. O., dated March 22, 1944, stating that it would be "pleased to set aside April 15, 1944, as the meeting date."

As arranged, the parties met on April 15. At the meeting, the C. I. O. submitted its proposals to the Company in the form of a six-page printed pamphlet entitled "Program of the United Steelworkers of America" which covered, among many other subjects of collective bargaining, wages, hours of work, vacations, seniority, and adjustment of grievances. This "Program" formed the basis for the proceeding later initiated by the C. I. O. before the National War Labor Board affecting employers and employees in the entire steel industry, including the Company and its employees, referred to hereinafter as the "Little Steel" case. It appears that, at the time of the April 15 meeting, there was pending before the Tenth Regional War Labor Board a wage dispute between the Company and the C. I. O. which had arisen from their 1943 contract. Consequently, during the course of the meeting, the Company suggested, and the C. I. O. agreed, that all discussion concerning the C. I. O.'s "Program" be suspended until the Tenth Regional War Labor Board disposed of the unsettled wage dispute.

On or about April 26, 1944, in connection with the "Little Steel" case, the C. I. O. filed with the National War Labor Board a petition for the issuance of an interim directive order reading that "if or when any contract involved in these disputes shall be terminated by virtue of a notice of termination given under the contract, the parties shall . . . continue uninterrupted production under the contract terms and conditions until the differences that now separate the parties are peacefully and finally resolved . . ." Apparently in aid of its application for the issuance of such an interim directive order and

with specific reference to the Company, the C. I. O. addressed the following communication to the National War Labor Board on June 12, 1944:

The attorneys for the company in their letter to you dated May 31, 1944, stated that the War Labor Board has no jurisdiction to render an interim directive order involving this company because there is a petition pending before the National Labor Relations Board, filed by the International Die Sinkers Conference, Local 220.

The situation with respect to this petition is as follows: The company employs approximately 25 die sinkers and helpers. The total number of employees is 325. The United Steel Workers of America has heretofore represented as exclusive bargaining agents all of these employees, including the die sinkers. The N. L. R. B., before it will hold a hearing on the Die Sinkers' petition, is making a further investigation of the matter.

We wish to call your attention to the fact that the company on page 2 of its attorneys' letter admits receipt from the union of a letter terminating its contract with the company, dated March 20, 1944. [Italics supplied.]

Thereafter, on June 19, 1944, the National War Labor Board issued an interim directive order in the "Little Steel" case which read, in substance, as the C. I. O. had requested.

On June 30, 1944, the Tenth Regional War Labor Board issued a directive order which partially disposed of the wage dispute ensuing from the 1943 contract between the Company and the C. I. O. That same day it sent a letter directing them "to negotiate the issue of a trainee program and progression, in light of the shop rates ordered by the Board." The parties complied with this direction and subsequently advised the Tenth Regional War Labor Board that they had agreed in some respects and had disagreed in others. On September 26, the Tenth Regional War Labor Board issued an amended directive order, and on October 5 a letter relating to the trainee program was sent to it by the Company and the C. I. O. jointly. There is some testimony that, in October, one of the C. I. O. committeemen "handled" a grievance which arose in the Company's foundry.

It was on August 1, 1944, that the A. F. L. informed the Company of its claim to representation.

The C. I. O. contends that its 1943 contract with the Company was automatically renewed in 1944. It also urges that, by reason of the issuance of the National War Labor Board's interim directive order on June 19, 1944, the contractual relationship between it and the Company was continued in operation pending that Board's determination of the "Little Steel" case. Thus, it argues in its brief, the 1943 contract "is in effect, at least until its next anniversary date, to wit, May

1, 1945 (or until decision by the National War Labor Board in the 'Little Steel' case),” and bars the instant proceeding. In addition, it asserts that the doctrine of the *Allis-Chalmers* and the *Aluminum Company* cases³ is applicable to the facts in this proceeding and the petition consequently should be dismissed.

We are of the opinion that the 1943 contract between the Company and the C. I. O. was not automatically renewed. Adverting to the termination clause of the contract, on March 20, 1944, the C. I. O. sent timely notice to the Company of its desire “to open” the agreement in order to negotiate “improvements.” At the April 15 meeting between the parties, the “improvements” requested by the C. I. O. took the form of a comprehensive “Program” encompassing numerous important matters pertaining to collective bargaining. That the Company does not consider itself contractually bound to the C. I. O. is unmistakably clear from the record. Furthermore, it is significant that, with reference to the “Little Steel” case, in writing the National War Labor Board on June 12 in support of its petition for an interim order directing the maintenance of the *status quo* in all instances where contractual relations had been, or would be, terminated, the C. I. O. emphasized that the Company admitted receipt of the March 20 letter from the C. I. O. “terminating its contract with the company.” In our view of the case, all the foregoing facts reveal that the March 20 letter effectively forestalled the automatic renewal of the 1943 contract.⁴ It is true the C. I. O. points to its relations with the Company subsequent to May 1, 1944, as evidence of the continued operation of the 1943 agreement. Such dealings, however, do not necessarily connote the existence, at that time, of a written collective bargaining agreement. Moreover, we note that, except for the alleged grievance which was “handled” in October 1944, all these dealings merely reflect compliance with the mandates of the Tenth Regional War Labor Board.

Nor are we persuaded that the instant proceeding is barred by reason of a continuance of the contractual relationship between the Company and the C. I. O. resulting from the June 19 interim directive order of the National War Labor Board. Assuming such continued existence of the 1943 contract, it is clear that its term, as contended by the C. I. O., was for a period ending with the National War Labor Board's decision in the “Little Steel” case, and thus was of indefinite duration.⁵

We turn now to the C. I. O.'s contention that the petition should be dismissed because of the principle we enunciated in the *Allis-*

³ *Matter of Allis-Chalmers Manufacturing Co.*, 50 N. L. R. B. 306; and *Matter of Aluminum Company of America*, 58 N. L. R. B. 5.

⁴ See *Matter of American Woolen Company (Webster Mills)*, 57 N. L. R. B. 647.

⁵ See *Matter of Ball Brothers Company*, 54 N. L. R. B. 1512.

Chalmers and *Aluminum Company* cases. In those cases a newly recognized or newly certified representative had had no real opportunity to function effectively as exclusive bargaining representative, inasmuch as its initial bargaining efforts, following recognition or certification, had resulted in proceedings before the National War Labor Board. However, the instant case is plainly distinguishable in that the C. I. O.⁶ has been recognized as bargaining agent since 1940, when its predecessor was certified by the Board, and has obtained for the employees it represented the benefits of collective bargaining as evidenced by its 1940 and 1941 contracts with the Company.⁷

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit it alleges to be appropriate.⁸

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

Except for a dispute concerning die sinkers, all the parties are in agreement that the appropriate unit should be that found by the Board in the first *General Metals* case.⁹ The Die Sinkers contends, and the Company agrees, that die sinkers comprise a separate appropriate unit, whereas the C. I. O. would include them in a single plant unit in strict accordance with the Board's prior unit finding. The A. F. L. takes no position with regard to the die sinkers and agrees to abide by the decision of the Board.

In the prior proceeding affecting the Company's employees, the Board specifically included die sinkers in a unit of production and maintenance employees. As previously noted, the C. I. O.'s predecessor was certified in 1940 as the bargaining representative of the employees in that unit. Since that time the C. I. O. or its predecessor has bargained for all such employees, including the die sinkers. In

⁶ Or its predecessor.

⁷ See *Matter of Fort Dodge Creamery Co.*, 53 N. L. R. B. 928; *Matter of MacClatchie Manufacturing Co.*, 53 N. L. R. B. 1268; *Matter of Landis Machine Co.*, 54 N. L. R. B. 1440.

⁸ The Field Examiner reported that the A. F. L. submitted 111 authorization cards bearing apparently genuine signatures, 102 of which bore names appearing on the Company's pay roll for the period between August 15 and 31, 1944, which contained the names of 252 employees in the unit alleged by the A. F. L. to be appropriate.

He further reported that the Die Sinkers submitted 21 authorization cards bearing apparently genuine signatures, all of which bore names appearing on the same pay roll, which contained the names of 34 employees in the unit which it alleged to be appropriate.

The Trial Examiner reported that the C. I. O. submitted a document dated September 16, 1944, purporting to designate the C. I. O. as the representative of its signers for the purpose of collective bargaining; and that the document bore 149 apparently genuine signatures, 148 of which bore names appearing on the Company's pay roll of August 31, 1944, which contained the names of 252 employees in the unit alleged by the C. I. O. to be appropriate.

⁹ See footnote 1, *supra*.

matters of collective bargaining die sinkers have been accorded the same treatment as all other employees. One of the die sinkers was a member of the negotiating committee of the C. I. O. and its predecessor, and he signed the 1940, 1941, and 1943 contracts with the Company referred to in Section III, *supra*. From 1940 to 1944 die sinkers were members of the C. I. O. or its predecessor. It was not until March 1944 that they affiliated with the Die Sinkers.

In view of our prior unit finding and the long history of collective bargaining which was premised upon it, we are not convinced that a separate unit of die sinkers is appropriate for the purposes of collective bargaining.¹⁰

Consequently, we find that all production and maintenance employees of the Company, including hammer men, heaters, die sinkers, machinists, blacksmiths, blacksmith helpers, press operators, press helpers, molders, molder helpers, coremakers, and laborers, 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 General Metals Corporation, Vernon, California, 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 Twenty-first Region, acting

¹⁰ See *Matter of Columbia Boat Works*, 56 N. L. R. B. 1517; *Matter of Doehler Die Casting Company*, 58 N. L. R. B. 166.

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 Los Angeles Metal Trades Council, affiliated with the A. F. L., or by United Steelworkers of America, affiliated with the C. I. O., for the purposes of collective bargaining, or by neither.