

In the Matter of DAVIS & FURBER MACHINE COMPANY and INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 83, A. F. L.

Case No. 1-R-2064.—Decided December 30, 1944

Mr. Samuel S. Rockwell, of North Andover, Mass., for the Company.

Mr. Harvery D. Wilson, of Boston, Mass., and *Messrs. Joseph A. Padway* and *Robert A. Wilson*, of Washington, D. C., for the Molders.

Grant & Angoff, by *Messrs. Sidney L. Grant* and *Harold B. Roitman*, of Boston, Mass., for the Steelworkers.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Molders & Foundry Workers Union of North America, Local 83, A. F. L., herein called the Molders, alleging that a question affecting commerce had arisen concerning the representation of employees of the Davis & Furber Machine Company, North Andover, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel G. Zack, Trial Examiner. Said hearing was held at Lawrence, Massachusetts, on September 25, 1944. The Company, the Molders, and United Steelworkers of America, C. I. O., herein called the Steelworkers, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. On October 16, 1944, the Board on its own motion ordered that the record be reopened and a further hearing be held to receive additional evidence relating to the issues in the case. Pursuant to said Order, a further hearing was held, upon due notice, at Lawrence, Massachusetts, on November 14, 1944, before the above-mentioned Trial Examiner. The Company, the Molders, and the Steelworkers, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and

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to introduce evidence bearing on the issues. The Trial Examiner's rulings made at both hearings are free from prejudicial errors 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

Davis & Furber Machine Company, a Massachusetts corporation having its principal office and place of business at North Andover, Massachusetts, is engaged in the manufacture and sale of textile machinery. Substantially more than 50 percent of the raw materials which the Company uses, consisting principally of about 1,000 tons of steel and about 3,000 tons of cast iron purchased annually, is shipped to the Company's North Andover, Massachusetts, plant, from points outside the Commonwealth of Massachusetts; and more than 50 percent of the Company's finished products, which each year have a total value of approximately \$3,000,000, is shipped to points outside the Commonwealth.

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

II. THE ORGANIZATIONS INVOLVED

International Molders & Foundry Workers Union of North America, Local 83, 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.

III. THE QUESTION CONCERNING REPRESENTATION

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

A statement of a Board agent, introduced into evidence at the hearing on September 25, 1944, indicates that the Molders represents a substantial number of employees in the unit which it alleges to be appropriate.¹

¹ The Field Examiner reported that the Molders submitted 38 membership cards, all of which bore the names of individuals who were listed on the Company's pay roll for the period ending August 26, 1944, as employees of the Company; and that 30 of said cards were dated August 1944, while 8 were undated. There are approximately 73 employees in the unit alleged by the Molders to be appropriate.

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 Molders alleges that the appropriate bargaining unit is comprised of all employees in the foundry, excluding executives, and supervisors, at the Company's North Andover plant. The Steelworkers contends that all production and maintenance employees, including the foundry employees, but excluding supervisory employees, constitute the only appropriate unit for the purposes of collective bargaining between the Company and its employees. In support of its position the Molders alleges that the foundry employees constitute a clearly defined and historical craft group whose function and interests are not integrated with the remaining production and maintenance employees. On the other hand, the Steelworkers denies the veracity of these allegations; points to an earlier decision of the Board wherein the Board determined that a plant-wide bargaining unit was appropriate; and alleges that the history of collective bargaining between the Company and its employees demonstrates the present appropriateness of the plant-wide bargaining unit.

The Company's plant consists of 14 buildings. Three of these, which are connected by passageways, house the foundry. The remaining buildings are adjacent to the foundry or to each other, but are not connected with the foundry by passageways. The functions of the employees in the foundry are to mold, cast, and to some extent finish the iron castings used in constructing the Company's products. The record discloses no temporary transfers of employees between the foundry and the other plant departments. The Company employs approximately 785 workers, of whom about 73 are employed in the foundry. *The foundry employees, classified by the Company as molders, coremakers, helpers or laborers, furnace tenders, sand blasters, chippers and grinders, and production clerks* work under the supervision of the foundry superintendent who is directly responsible to the Company's Board of Directors.

The record discloses that prior to 1942, there was no collective bargaining between the Company and its employees. On December 22, 1942, the Board provided for an appropriate hearing upon a petition for certification of representatives filed by the Steelworkers. On January 8, 1943, the Board issued its Decision and Direction of Election wherein it found, in accordance with a stipulation between the Company and the Steelworkers, that the unit appropriate for the purposes of collective bargaining was comprised of "all production and maintenance employees of the Company at its North Andover,

Massachusetts, plant, excluding executives, supervisory employees, foremen and assistant foremen, and office and clerical workers," and directed that an election be conducted among the employees in this unit, under the supervision and direction of the Regional Director for the First Region (Boston, Massachusetts), to determine whether or not they desire to be represented by the Steelworkers.² Thereafter the Regional Director posted notices that said election would be conducted on January 27, 1943. On January 22, 1943, an agent for the Molders advised the Regional Director that the Molders was the representative of employees in the Company's foundry; had received no notice of the December 22, 1942, hearing; and desired to participate in the election. The Regional Director advised the agent to present evidence of its representation of such employees. On January 25, 1943, said agent advised the Regional Director that it had been impossible to secure the documents required for the presentation of such evidence. The agent for the Molders testified at the hearings herein that the Regional Director thereupon advised him that the Board would proceed with the election in accordance with its direction, but that the Molders, assuming it then represented a majority of the foundry employees, could be certified as the representative of said foundry employees a year after any certification of the Steelworkers or after the expiration of any contract between the Steelworkers and the Company. Pursuant to the results of the election, the Board certified the Steelworkers as the representative of the employees in the unit described above.³ Thereafter, on October 14, 1943, the Steelworkers and the Company executed a written contract covering working conditions, etc., for these employees.

It appears that at the time of the December 22, 1942, hearing, and the January 27, 1943, election, 8 or 10 of the approximately 45 foundry employees then employed by the Company were members of the Molders; and that none of the foundry employees voted in that election.⁴ At the present time, at least 38 of the foundry employees, who now number approximately 73, appear to have designated the Molders as their representative, while 15 are paying dues to the Steelworkers under a maintenance-of-membership agreement between that union and the Company.

Absent a history of collective bargaining and dependent in part upon the desires of the employees themselves, the Board has customarily held that employees such as those in the group sought

² *Matter of Davis and Furber Machine Company*, 46 N. L. R. B. 887.

³ The certification was issued on February 6, 1943, and was not published in the Board's printed reports.

⁴ Approximately 90 percent of all other eligible voters, excluding the foundry employees, voted in the election. According to testimony at the hearing, the foundry employees did not vote "because the A. F. L. was not on the ballot."

herein by the Molders may constitute an appropriate bargaining unit.⁵ However, the Board, in the interest of maintaining stability relative to the conditions surrounding collective bargaining, has been reluctant to disturb a plant-wide bargaining unit where the history of collective bargaining has demonstrated the effectiveness of such a unit;⁶ and it gives great weight to its prior determination of the appropriate unit made after a full hearing in which all interested parties participated.

In the instant case, the Molders was not notified of the December 22, 1942, hearing, and was not permitted to participate on the January 27, 1943, election, although it had members in the foundry at the time of both the hearing and the election, and sought to participate in said election. Further, the Molders alleges that it was assured of an opportunity to secure certification as the bargaining representative of the foundry employees at a later date, and it is reasonable to assume that the subsequent non-participation by the foundry employees in the election of January 27, 1943, was based upon their understanding that such an opportunity would be realized. Since the time of the election the Molders has maintained and increased its membership among the foundry employees and there is no showing that said employees have collaborated in the activities of the Steelworkers as the plant representative.

In view of the foregoing, we are not persuaded here that the history of collective bargaining has conclusively demonstrated that effective bargaining has been achieved and maintained on the basis of a plant-wide unit, or that the circumstances in the case are such that our prior unit determination compels the dismissal of said petition. Accordingly, we shall ascertain the desires of the foundry employees by means of an election by secret ballot to be conducted among all employees in the foundry of the Company's North Andover, Massachusetts, plant, excluding all executives and 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 Molders or by the Steelworkers. Upon the results of the election will depend, in part, our determination of the appropriate unit. If a majority of the employees in this voting group select the Molders as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, these employees choose the Steelworkers, they will thereby have indicated their desire to be part of the production and maintenance unit.

⁵ See *Matter of The Anstice Company*, 58 N. L. R. B. 587, and cases cited therein.

⁶ See *Matter of Doehler Die Casting Company*, 58 N. L. R. B. 166; *Matter of Lima Locomotive Works, Incorporated*, 58 N. L. R. B. 160.

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 Davis & Furber Machine Company, North Andover, Massachusetts, 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 First 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 the 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 any 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 International Molders & Foundry Workers Union of North America, Local 83, A. F. L., or by United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.