

In the Matter of SPERRY GYROSCOPE COMPANY, INC. and LOCAL 87, INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, A. F. OF L. and LOCAL 450, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO

*Case No. 2-RE-69.—Decided February 2, 1945*

*Messrs. Andrew J. Perceival, James E. Connelly, Frank G. Gillar, and Edward E. DaParma, all of Great Neck, Long Island, N. Y., for the Company.*

*Messrs. Jerome Y. Sturm, Frank Jeanette, and A. Stein, of New York City, for the Molders.*

*Messrs. Frank Scheiner, Michael Orfink, Joseph F. Fitzgerald, and George Rooney, of New York City, for the UE.*

*Mr. A. Sumner Lawrence, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Sperry Gyroscope Company, Inc., Great Neck, Long Island, New York, herein called the Company, alleging that a question affecting commerce had arisen concerning the representation of its employees, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at New York City between November 10 and December 7, 1944. The Company, Local 87, International Molders & Foundry Workers Union of North America, A. F. of L., herein called the Molders, and Local 450, United Electrical, Radio & Machine Workers of America, CIO, herein called the UE, 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup> All parties were afforded an opportunity to file briefs with the Board.

<sup>1</sup> Among other rulings, the Trial Examiner overruled the objections of counsel for the Molders and the UE to the eliciting of testimony by the Trial Examiner on matters in issue between the parties. The Board's Rules and Regulations—Series 3, as amended, Article III, Section 6 (conduct of hearing), states: "It shall be the duty of the Trial

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Sperry Gyroscope Company Inc., a New York corporation, has its principal office at Great Neck, Long Island, New York, and is engaged in the manufacture, sale, and distribution of aeronautical and marine navigational instruments at Brooklyn, Garden City, and Great Neck, New York. The only plant involved in the present proceeding is a plant known as the Nassau plant which is located at a distance of approximately  $3\frac{1}{2}$  miles from Great Neck, Long Island, New York. During the year 1943, the Company purchased raw materials valued at more than \$100,000, of which 20 percent was obtained from points outside the State of New York. During the same period, the Company's sales of manufactured products amounted to more than \$100,000, of which approximately 75 percent represents shipments made to points outside the State of New York.

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

#### II. THE ORGANIZATIONS INVOLVED

Local 87, International Molders & Foundry Workers Union of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Local 450, United Electrical, Radio & Machine Workers 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

On July 31, 1944, the Company received a letter from the UE claiming that there were certain "work categories" located in the foundry of the Company's Nassau plant which raised a question of jurisdiction as between the UE and the Molders. Subsequent conferences between the Company, the Molders, and the UE failed to produce an agreement with regard to the employees claimed by the two unions herein concerned. The Company thereupon declined to bargain with either union with respect to the disputed classifications prior to a determi-

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Examiner to inquire fully into the question of representation" In view of the foregoing provision and the fact that a proceeding for the investigation and certification of representatives is not an adversary proceeding but a proceeding for the purpose of ascertaining the facts upon which the Board may act in an administrative capacity under the provisions of the National Labor Relations Act, the objections above noted to the conduct of the Trial Examiner are without merit.

nation by the Board of the issues outstanding between the two labor organizations.

A statement of a Field Examiner for the Board, together with other evidence introduced at the hearing, indicates that the UE and the Molders each represents a substantial number of employees in the disputed classifications.<sup>2</sup>

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 Company, petitioner in the present proceeding, claims as appropriate a unit consisting of all employees of the Company's foundry at its Nassau plant, including among the usual foundry occupations the classifications of sand casting cleaners and foundry laborers, but excluding therefrom sand casting cleaner leaders, die casting cleaners, and die casting cleaner leaders, cutter sharpener, die casting machine operators, and die casting machine operator leaders, furnace tender leader, leader heat treating, leader inspector, inspectors first class, inspectors second class, U. R. W. inspectors, leader laborer, machinists first class, machinists, machinists' helpers, leader maintenance men, maintenance men first class, maintenance men second class, leader molders, porters, stock clerk leaders, stock clerks, tool maker first class leader, tool makers first class, tool makers second class, trades helpers, welder leader, welders, production control, cafeteria, guards, time-keepers, clerical employees, and all other supervisory employees. The parties are in agreement that such customary foundry classifications as coremakers and apprentices, furnace tenders, machine molders and apprentices, molders and their helpers, pourers, sand muller operators, shake-out men, and all laborers assisting the foregoing workers, constitute a well defined foundry unit. The parties are also in agreement with respect to a majority of the exclusions requested by the Company. The only controversy, apart from minor issues relating to leaders and certain foundry laborers, concerns the fringe classifications of sand casting cleaners, die casting cleaners, and die casting machine operators. The Company and the Molders would include, while the UE would exclude, sand casting cleaners. On the other

<sup>2</sup> The Field Examiner reported that the UE had submitted 170 designations consisting of application cards, of which 100, dated largely in 1943 and 1944, including 85 dated in July 1944 and 6 undated, bear the names of employees on the pay roll of August 21, 1944, in the foundry unit consisting of 361 employees. The Field Examiner further reported that a cross-check of the said 100 cards against the names of workers listed as "casting cleaners," which classification consists of about 103 workers, and constitutes the principal issue between the parties, indicates that of the said 100 cards a total of 85 bear the names of persons so classified. The parties stipulated at the hearing that both labor organizations had representation among the employees in dispute.

hand, the Company and the UE are agreed upon the exclusion of die casting cleaners and die casting machine operators, both of which classifications the Molders would include in the recognized unit of foundry employees.<sup>3</sup>

The employees referred to as sand casting cleaners are identified on the Company's pay roll as comprising approximately 75 percent of the group designated thereon as "casting cleaners," a classification which also includes "die casting cleaners," although the latter work under different supervision, and perform work which is substantially different from that of sand casting cleaners. The work of said casting cleaners consists in general of preparing for subsequent machining in the factory area, sand castings which have previously been cast by the molders, a recognized craft group, and admittedly a part of the foundry unit. Like the latter, sand casting cleaners, who are located in the foundry adjacent to the molders, are among the highest rated hourly paid workers in the foundry.

The specific function of sand casting cleaners is to remove foreign matter, surplus metal, and other substances which become attached to the sand casting in the process of its formation. The function in question involves five principal operations, namely, sand blasting, sawing, chipping, grinding, filing and burring. While for the most part, a sand casting cleaner assigned to one of these particular steps generally spends most of his time at such assignment, all such operations are generally familiar to most of the sand casting cleaners through a company policy of rotating workers from one operation to another according to the volume of work and the demand for employees in each operation.<sup>4</sup> Although not referred to as sand casting cleaners, employees performing many of the aforesaid operations have been included in appropriate units of foundry employees.<sup>5</sup> In addition thereto, the record discloses that while sand casting cleaners were apparently at one time covered by plant-wide agreements,<sup>6</sup> they have been included in the foundry unit under agreements between the Company and the Molders since June 16, 1943. In view of the close relationship between sand casting cleaners and the recognized foundry

<sup>3</sup> The foundry unit, aside from the categories presently in dispute, has for many years been represented by the Molders under a series of collective bargaining agreements. The foundry unit as such, is distinct from a further unit of the Company's production and maintenance employees at its Nassau plant, which unit is currently represented by the UE as the result of a certification by the Board following a consent election. See Decision and Certification (2-R-3666) issued January 7, 1943.

<sup>4</sup> Sand casting cleaners who are thus rotated remain unchanged with respect to supervision, rate of pay, and general location of work.

<sup>5</sup> See *Matter of Rosedale Foundry & Machine Company*, 35 N. L. R. B. 1; *Matter of Red Jacket Manufacturing Company*, 36 N. L. R. B. 932; *Matter of Vilter Manufacturing Company*, 44 N. L. R. B. 232; *Matter of Eagle Iron Works*, 46 N. L. R. B. 1451; and *Matter of Bovaird & Seyfang Manufacturing Company*, 47 N. L. R. B. 1240.

<sup>6</sup> Although not specifically mentioned therein, sand casting cleaners were apparently included under earlier contracts between the Company and other labor organizations covering all hourly paid employees.

classifications, together with the general practice of including in foundry units employees performing the functions of sand casting cleaners, and particularly in the light of the recent history of collective bargaining between the Company and the Molders,<sup>7</sup> we find that sand casting cleaners are properly a part of the unit of foundry employees. Accordingly, we shall include them in the foundry unit hereinafter found appropriate.

With respect to the groups of employees known as die casting cleaners and die casting machine operators, it appears that these employees either perform machine operations or do work closely related to that of machine employees.<sup>8</sup> While die casting machine operators produce castings, their work is to operate electrically controlled hydraulic die casting machines and is unlike that of the molders, whose production of sand castings by hand methods in contrast with the machine output of the die casting machine operators, depends upon the skill of the individual molder. Included in the work of die casting machine operators is the setting of dies which are kept in repair by foundry machinists whom all parties agreed should be excluded from the unit of foundry employees. Insofar as the die casting cleaners are concerned, the record reveals that these employees occupy, with respect to the die casting machine operators, a position similar to that of the sand casting cleaners in relation to the molders herein-above referred to. Die casting cleaners trim the smaller and lighter machine-made castings of the die casting machine operators and work with small bench tools, performing relatively less skilled operations closely resembling those of the machine workers employed in the factory area and included in the production and maintenance unit. In addition thereto, the evidence discloses that die casting cleaners and the die casting machine operators will, in all probability, soon be transferred from the temporary quarters which they now occupy in the foundry, to the machine shop area of the factory in the main building of the plant.<sup>9</sup> At the hearing, the Molders stated that it claimed die casting cleaners and die casting machine operators only so long as these classifications remained in their present foundry location. Under the circumstances, we find that the die casting cleaners and the die casting machine operators have interests more closely related to those of the machinists in the production and maintenance

<sup>7</sup> See *Matter of Sacramento Publishing Company, Ltd.*, 57 N. L. R. B. 1636.

<sup>8</sup> Machine employees are presently included in the production and maintenance unit represented by the UE.

<sup>9</sup> The Company indicated at the hearing that it would begin the physical transfer of die casting cleaners and die casting machine operators to the main building prior to January 1, 1945. While we have since been advised by the Regional Office that such transfer has as yet not been commenced due to the fact that the space which these employees will occupy requires additional work before it can be used, according to the present estimate of the Company, the actual transfer of these employee classifications and their equipment will begin on February 15, 1945, and will be completed by March 1, 1945.

unit than to the interests of the employees comprising the unit of foundry classifications. Accordingly, we shall at this time exclude die casting cleaners and die casting machine operators from the unit of foundry employees hereinafter found appropriate. However, our determination in this respect will be subject to reexamination in the event that the contemplated transfer of these employees is not effected within a reasonable time following the issuance of the present decision.

There remains for consideration the questions concerning the disposition of foundry laborers and the inclusion or exclusion of leaders among the foundry and fringe group classifications.

With regard to foundry laborers, the Company and the Molders are agreed that foundry laborers generally should be included in the unit of foundry employees. On the other hand, the UE contends that foundry laborers customarily working with classifications excluded from the foundry unit should similarly be excluded therefrom.

The record reveals that, while a few laborers are at present regularly assigned to the functions of rough inspection and heat treating,<sup>10</sup> it is not possible in other instances to determine which laborers are regularly assigned to specific types of operations in the foundry for the reason that laborers as a group rotate from one foundry classification to another and frequently assist several different groups in a single day, according to the needs of the particular group. In addition thereto, it appears that all laborers in the foundry, wherever located, report to a laborer leader who maintains a foundry labor pool from which laborers are assigned to various working groups. The Company stated at the hearing that foundry laborers would not be affected by the contemplated transfer of die casting cleaners and die casting machine operators to the main building. Foundry laborers as a group have generally been included without distinction in appropriate units of foundry employees.<sup>11</sup> We find that all the foundry laborers herein concerned have substantial interests in common with those of the usual foundry classifications. We shall, accordingly, include them in the foundry unit hereinafter found appropriate.

With respect to the question of the inclusion or exclusion of leaders, the unions contend, in opposition to the Company, that leaders in the foundry should be included within the unit. The Company maintains that while the title of leader does not by itself confer supervisory authority,<sup>12</sup> employees who are leaders in the foundry have authority

<sup>10</sup> There is no dispute among the parties with respect to the inclusion of these recognized foundry occupations

<sup>11</sup> See in addition to cases cited in footnote No 5, the following: *Matter of Davenport Besler Corporation*, 39 N. L. R. B. 1174; *Matter of National Bearing Metals Corporation*, 48 N. L. R. B. 418

<sup>12</sup> The Company admits that numerous leaders within factory classifications have no substantial supervisory authority.

to make effective recommendations with respect to the status of employees and should therefore be excluded from any unit found appropriate in the present proceeding. The unions, on the other hand, claim that such leaders have no substantial supervisory authority and also that they have been included under recent contracts between the Molders and the Company. However, while several witnesses testified as to the amount of supervision exercised by leaders over foundry employees, they failed to refute the evidence offered by the Company to the effect that foundry leaders have effective power of recommendation with respect to the status of such foundry employees.<sup>13</sup> In addition thereto, it appears that such leaders, whose hourly rate is at least 10 percent higher than that paid to the general workers, spend practically all their time supervising, and do no manual labor except in connection with the instruction of employees. Under the circumstances, and despite the fact that foundry leaders have been the subject of collective bargaining between the Molders and the Company,<sup>14</sup> we find that all leaders in the foundry are supervisory employees within the meaning of our usual definition. We shall, accordingly, exclude them from the unit of foundry employees hereinafter found appropriate.

We find that all employees of the Company's foundry at its Nassau plant under the jurisdiction of the general foundry foreman, including sand casting cleaners and foundry laborers, but excluding the cutter sharpener, inspectors first class, inspectors second class, U. R. W. inspectors, machinists first class, machinists, machinists' helpers, maintenance men first class, maintenance men second class, porters, stock clerks, tool makers first class, tool makers second class, trades helpers, welders, cafeteria employees, guards, timekeepers, clerical employees, production control employees, die casting cleaners, die casting machine operators, leaders, and all other 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 Elec-

<sup>13</sup> Foundry leaders are consulted by higher supervisory employees to determine whether a worker merits an increase in pay upon periodic rate reviews.

<sup>14</sup> The Company stated at the hearing that the inclusion of foundry leaders under its contracts with the Molders had been effected over its protest.

tion herein, subject to the limitations and additions set forth in the Direction.

The UE requests that it may appear on the ballot as "UE-CIO, Local 450, United Electrical, Radio & Machine Workers of America, CIO." The request is hereby granted.

#### 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 Sperry Gyroscope Company, Inc., Great Neck, Long Island, New York, 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 Second 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 Local 87, International Molders & Foundry Workers Union of North America, A. F. of L., or by UE-CIO, Local 450, United Electrical, Radio & Machine Workers of America, CIO, for the purposes of collective bargaining, or by neither.