

In the Matter of AMERICAN CAN COMPANY, EMPLOYER and INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS AFL, LOCAL 168, PETITIONER

Case No. 20-RC-702.—Decided May 8, 1950

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Harry Bamford, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Styles].

Upon the entire record in this case, the Board finds:²

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The Intervenor, and the California Metal Trades Association, herein called the Association, have been parties to successive collective bargaining agreements since 1938.³ One of the Association's functions is to negotiate with labor organizations collective bargaining contracts on behalf of its member firms. The Employer has been a member of the Association for some time prior to this proceeding. However, during the 1949 contract negotiations between the Intervenor and the Association, the Employer withheld the power of attorney designating the Association as its collective bargaining agent

¹ International Association of Machinists, and its Local 68, herein called the Intervenor, was permitted to intervene on the basis of an alleged contractual interest.

² The hearing officer referred to the Board the Intervenor's motion to dismiss the petition on the ground that a contract is a bar to this proceeding. Such motion will be considered hereinafter.

³ For a more comprehensive history of collective bargaining between the Intervenor and the Association, see *California Metal Trades Association, et al.*, 72 NLRB 624.

because of disagreement with regard to a proposed insurance plan which the parties were negotiating.

In April 1949, during the period of the Employer's withdrawal, the Association and the Intervenor executed a master agreement, which expires on July 1, 1950. In August 1949, the Employer executed and forwarded its power of attorney designating the Association as its collective bargaining agent. The contract lists all of the Association members except that of the Employer. The record indicates that upon receipt of the Employer's power of attorney, the Association notified and gave a copy thereof to the Intervenor. However, the parties did not subsequently supplement the master agreement to include the Employer therein. We therefore find that the contract, insofar as it applies to the Employer, is at best an oral agreement, which cannot operate as a bar to a present determination of representatives.⁴ Accordingly, the Intervenor's motion to dismiss the petition on this ground is denied.⁵

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a unit of all employees in the blacksmith and heat treating departments. The Intervenor contends that these departments should not be severed from the over-all unit. The Employer contends that the departments should either be joined in a single unit or be included in the over-all unit.

The blacksmith and heat treating departments consist in the one case of a hammerman, and in the other of a heat-treater, together with their respective helpers.⁶ In the process of manufacturing the various tools, dies, and machine parts required by the Employer, castings received from an outside manufacturer are brought into the blacksmith department where they are placed on the steam hammer and forged into parts to be used by the production department. Tolerances of from one-eighth of an inch plus to one-eighth of an inch minus are required. The hammerman operates the steam hammer and is considered by all of the parties to be a highly skilled machine operator requiring from 'approximately 1½ years to 2 years' training to become proficient in the hammer operation. From the blacksmith shop

⁴ See *The Association of Motion Picture Producers, Inc., et al.*, 87 NLRB 657; *Eicor, Inc.*, 46 NLRB 1035.

⁵ In view of our finding herein, we deem it unnecessary to pass upon whether the contract would operate as a bar, where as here, the classifications of employees sought have not been listed in the agreement and do not appear to be covered by it.

⁶ Both helpers jobs call for aptitude rather than skill or training, and, in the course of their work, the helpers each acquire the skills and experience of their respective superior.

the castings are then removed to the adjacent heat treating department and there subjected to an annealing process by the heat-treater. The record discloses that from the point of view of skills, the heat-treater is considered even more highly skilled than the hammerman, requiring at least 4 years of training to become proficient in his work. Both the hammerman and the heat-treater receive rates of pay equivalent to that of the journeymen machinists in the plant, and the helpers receive the same pay as machinists' helpers. It further appears that there is no interchange of employees in these departments with those of other departments.

From the foregoing facts, we are of the opinion that the hammerman and the heat-treater and their helpers have skills and functions within the traditional craft of blacksmiths. As a recognized craft group, they may constitute a separate appropriate unit.⁷ However, as the inclusion of the blacksmith department and the heat-treating department employees in the existing production and maintenance unit is also clearly appropriate, we shall not make any final unit determination at this time, but shall first ascertain the desires of these employees as expressed in the election hereinafter directed. If the majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit.

In accordance with the foregoing, we shall direct that an election be held among all hammermen, heat-treaters, and their helpers in the blacksmith and heat treating departments at the Employer's San Francisco, California, plant, excluding guards, professional employees, supervisors, and all other employees.

DIRECTION OF ELECTION⁸

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the voting group described in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have

⁷ *Plomb Tool Company, J. P. Danielson Division*, 87 NLRB 134; *Merck & Co., Inc.*, 88 NLRB 975.

⁸ Either participant in the election directed herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by International Brotherhood of Blacksmiths, Drop Forgers and Helpers, AFL, Local 168, or by International Association of Machinists, Local 68, or by neither.