

In the Matter of AMERICAN CAN COMPANY *and* AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 5, AFL

In the Matter of AMERICAN CAN COMPANY *and* UNITED STEELWORKERS OF AMERICA, CIO

In the Matter of AMERICAN CAN COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, AFL

*Cases Nos. 14-R-1137, 14-R-1140, and 14-R-1146, respectively.—
Decided May 31, 1945*

Mr. Morgan Callahan, of New York City, for the Company.

Mr. Victor B. Harris, of St. Louis, Mo., for the CIO:

Mr. W. C. Riley, of St. Louis, Mo., for the IAM.

Mr. H. P. Koenig, of St. Louis, Mo., for the IBEW.

Mr. Charles D. Bond, of St. Louis, Mo., for the Pressmen.

Mr. Robert A. Roessel and *Miss Ruth Bowdorfer*, of St. Louis, Mo., for the Amalgamated.

Mr. William L. Ryan, of St. Louis, Mo., for the Teamsters.

Mr. Sidney Grossman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions filed by the Amalgamated Lithographers of America, Local 5, AFL, hereinafter called the Amalgamated, by the United Steelworkers of America, CIO, hereinafter called the CIO, and by the International Association of Machinists, District No. 9, AFL, hereinafter called the IAM, alleging that a question affecting commerce had arisen concerning the representation of employees of American Can Company, St. Louis, Missouri, hereinafter called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Helen F. Humphrey, Trial Examiner. Said hearing was held at St. Louis, Missouri, on April 5, 1945. The Company, the Amalgamated, the CIO, the IAM, the International Brotherhood of Electrical Workers, Local No. 1, AFL, hereinafter called the IBEW, the International Printing

Pressmen and Assistants' Union of North America, Papercraft Workers' Union, Local No. 409, AFL, hereinafter called the Pressmen, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called the Teamsters,¹ 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

American Can Company, a New Jersey corporation, is engaged in the manufacture of metal and paper containers at its St. Louis, Missouri, plant, with which we are here concerned. During the year 1944, the Company purchased raw materials in excess of \$1,500,000 in value, of which approximately 50 percent was secured from sources outside the State of Missouri. During the same period, the Company manufactured finished products in excess of \$1,900,000 in value, of which approximately 50 percent was shipped to points outside the State of Missouri.

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

II. THE ORGANIZATIONS INVOLVED

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

Amalgamated Lithographers of America, Local 5, International Association of Machinists, District No. 9, International Brotherhood of Electrical Workers, Local No. 1, and International Printing Pressmen & Assistants' Union of North America, Papercraft Workers' Union, Local No. 409, all affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to any of the Unions herein as the exclusive bargaining representative of its employees until they have been certified by the Board in an appropriate unit.

¹ The Teamsters appeared at the hearing, but withdrew without further participation after the other unions herein disclaimed any interest in the Company's chauffeurs.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO, the IBEW, the IAM, and the Amalgamated each represents a substantial number of employees in the units each claims to be appropriate.²

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 DETERMINATION OF REPRESENTATIVES

The CIO seeks a unit consisting of all employees of the Company at its St. Louis, Missouri, plant, including watchmen, but excluding truck drivers, office employees, factory clerical employees, and all supervisory employees. The Pressmen is in substantial agreement with the unit proposed by the CIO, but would also exclude therefrom the employees sought by the IAM and the IBEW. The IAM requests a unit consisting of all machinists, apprentice machinists, and die makers in the Company's machine shop. The IBEW contends that all electricians constitute a separate unit. The Amalgamated urges the appropriateness of a separate unit confined to the employees in the lithograph department, excluding the foreman. The Company takes no position with respect to the appropriate unit or units except, with the concurrence of the other parties herein, it would exclude therefrom all salaried employees. In the main, each of the craft Unions herein involved seeks a unit covering the employees of the Company who fall within its jurisdiction. Their respective contentions will be discussed below.

The unit proposed by the IAM

The IAM requests a unit comprised of all machinists, apprentice machinists, and die makers in the Company's machine shop. In opposing the separation of these employees from a plant-wide unit, the CIO, in its brief, asserts that the unit proposed by the IAM consists of

²The Regional Director reported that the CIO submitted 87 authorization cards, of which 70 represented employees appearing on the Company pay roll of February 4, 1945, and that 4 cards bore dates in December 1944, 24 in January 1945, 9 in February 1945, and 33 were undated, in an alleged appropriate unit consisting of 164 employees.

The IAM submitted eight authorization cards, all of which bore dates in February 1945, and represented employees on the pay roll above referred to in an alleged appropriate unit consisting of eight employees.

The IBEW submitted two authorization cards, both of which bore dates in February 1945, and represented employees on the said pay roll in an alleged appropriate unit consisting of two employees.

The Amalgamated submitted 8 application cards, of which 6 bore dates in January 1945, and 2 were undated; all the cards represented employees on the above-mentioned pay roll in an alleged appropriate unit consisting of 12 employees.

The Pressmen submitted 33 authorization cards, of which 7 bore dates in January 1945 and 26 in February 1945; 30 cards represented employees on the company pay roll of February 4, 1945, in an alleged appropriate unit consisting of 154 employees. The representation evidence submitted by the Pressmen is adequate to support its status as intervenor and accord it a place on the ballot.

an artificial grouping of employees in the Company's maintenance department and that excluded therefrom are helpers and other employees who function as machinists.

The record discloses that the Company's maintenance department includes numerous classifications of employees who work in the machine shop under the immediate supervision of the machine shop foreman. As part of this group, there are approximately eight employees who fall within the classifications sought by the IAM. They are highly skilled craftsmen who have been with the Company for many years and generally receive a greater wage rate than the production employees. There is no interchange between these employees and other employees in the plant. We have often found that such employees constitute a skilled and functionally cohesive group, traditionally represented by craft organizations for the purposes of collective bargaining.³ Nor is the integral character of the unit altered by the IAM's desire to exclude the employees referred to by the CIO. The evidence reveals that the Company does not employ any helpers who are regularly assigned to the machinists, but occasionally it may utilize the services of other employees in the plant to assist the machinists, as well as other maintenance workers, in the performance of unskilled duties. It also has in its employ a group of employees classified as machine adjusters who, under separate supervision in their respective departments, are primarily responsible for the proper functioning of machines employed in the production process, and, although they may make minor machine repairs, unlike the machinists, they do not use machine tools and ordinarily have not pursued any apprenticeship training. We, therefore, find that, absent any history of collective bargaining, the employees sought by the IAM may appropriately bargain as a separate craft unit. On the other hand, it is evident that the employees in this group may also form part of the broader plant-wide unit sought by the CIO. Accordingly, our determination of the unit issue with respect to these employees will depend, in part, upon their own desires to be expressed in the election hereinafter directed.

The unit proposed by the IBEW

The IBEW seeks a unit consisting of the Company's electricians. The CIO opposes the appropriateness of a separate unit of electricians. The Company employs a chief electrician⁴ and an electrician class B,

³ See *Matter of American Can Company*, 57 N. L. R. B. 104, where the unit, although comprised of all the employees in the Company's machine shop, was substantially similar to that here sought by the IAM; *Matter of Santa Cruz Portland Cement Company*, 52 N. L. R. B. 444

⁴ The record does not disclose that the chief electrician possesses any supervisory authority.

who have their headquarters in the engine room and, as part of the maintenance department, are under the supervision of the machine shop foreman. While the services of other employees in the plant may at times be utilized to assist the electricians, the record discloses that this does not occur with any appreciable frequency. Nor do electricians ordinarily perform the work of other employees in the plant. In the absence of any history of collective bargaining, we have frequently found that employees similar to those whom the IBEW seeks to represent constitute a cohesive and identifiable group; it is also apparent that such employees on the other hand might well be included within the plant-wide unit.⁵ Accordingly, we find that the electricians may properly constitute a separate bargaining unit or function with equal effectiveness as part of the broader unit sought by the CIO.

The IBEW seeks the inclusion of Mack Scott, a millwright, who receives a wage rate equivalent to that of a class B electrician, and keeps his tools in the engine room. The evidence reveals that Scott performs miscellaneous duties throughout the plant as a "general handyman." Thus, he runs errands, acts as a chauffeur, conducts city inspectors through the plant, assists the millwrights, and, although during his spare time he helps the electricians, he does not spend more than 25 percent of his time in the performance of such duties. It is, therefore, clear that Scott is neither a helper regularly assigned to the electricians nor a regularly employed electrician; accordingly, we shall exclude him from the voting group of electricians.

The unit proposed by the Amalgamated

The Amalgamated desires a unit comprised of the employees in the lithograph department, excluding the foreman. The CIO and the Pressmen urge the inclusion of the lithograph employees in the broader unit each seeks to represent.

The employees⁶ in the lithograph department⁷ are engaged in processing sheet metals by the addition of labels and protective coating. The Company regards them as a separate and distinct departmental group. Although one or more of these employees may spend part of their time in the glue room, which is also under the supervision of the lithograph foreman, the glue room is located in a separate portion of the plant and is not regarded by the Company as part of the lithograph department. While the evidence reveals some interchange between employees in the lithograph department and those of other

⁵ *Matter of Illinois Division, Bendix Aviation Corporation*, 54 N. L. R. B. 1051; *Matter of Douglas Aircraft Company, Inc.*, 54 N. L. R. B. 87.

⁶ The Company's pay roll includes the following employee classifications in the lithograph department: apprentice pressmen, operator coater and automatic feeder, paint mixer, machine adjuster, oven stripper, tend automatic feeder (presses), and machine operator.

⁷ The printing process in the plant is confined to this department.

departments, such interchange is not appreciable. Although the employees in the lithograph department have not been previously bargained for, the record discloses that the Company has bargained separately for lithographic employees in several of its other plants. We have held that employees engaged in the lithographic process constitute a distinct group possessing a community of interest such as to warrant our finding that they constitute a separate appropriate unit for the purposes of collective bargaining.⁸ Conversely, it is apparent that because of their close functional relationship to other employees of the Company, they may properly form part of a larger plant-wide unit. Accordingly, our determination of the unit issue with respect to these employees will depend, in part, upon their own desires as expressed in the elections hereinafter directed among them.⁹

As indicated above, the CIO and the Pressmen would include watchmen in the residual production and maintenance unit. The Company has in its employ approximately six employees who are classified as watchmen and are under the joint supervision of the master mechanic and the supervisor of personnel. Although they are not militarized, they are armed, uniformed, and have been licensed as special watchmen under the Ordinances of the City of St. Louis. They are under duty to guard the Company's premises against trespasses, fires, and other emergencies that may arise, and to report the progress of their plant rounds as required by the local office of the American Telegraph Company where they are registered. In addition, they record the time employees enter and leave the plant, report any infractions of the Company's regulations on the part of employees, and during their spare time perform miscellaneous duties in and about the plant. Since the watchmen are deputized under local law, and serve in a monitorial capacity, we shall, in accordance with our customary policy, exclude them from the production and maintenance unit.¹⁰

As hereinbefore indicated, we shall make no final determination with respect to the appropriate unit or units pending the outcome of the elections hereinafter directed. We shall direct that separate elections by secret ballot be held among the employees in each of the voting

⁸ *Matter of Con P Curran Printing Company*, 57 N. L. R. B. 185; *Matter of American Can Company, Southern, New Orleans Factory, New Orleans, Louisiana*, 43 N. L. R. B. 838.

⁹ The CIO, in its brief, contends that were the Board to find that the employees in the lithograph department constitute a separate appropriate unit, it would, in effect, be resolving a jurisdictional dispute between the Amalgamated and the Pressmen. We find no merit in such contention in view of the presence in this proceeding of a third labor organization, not affiliated with the parent body of the Amalgamated and the Pressmen. See *Matter of Montgomery Ward & Co., Incorporated*, 50 N. L. R. B. 163. Moreover, we have held that effective resolution of the existing conflict between the two affiliated unions here concerned cannot be had without resort to the administrative processes of the Act. See *Matter of Midwest Printing Co.*, 58 N. L. R. B. 673.

¹⁰ *Matter of Columbian Paper Company*, 60 N. L. R. B. 1201; *Matter of Abrasive Company*, 59 N. L. R. B. 1488; *Matter of Ingalls Shipbuilding Corporation*, 59 N. L. R. B. 924.

groups below set forth, who are employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, excluding salaried employees, foremen, 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, subject to the limitations and additions set forth in the Direction :

1. All employees of the Company classified as machinists, apprentice machinists, and die makers: ¹¹
2. All employees of the Company classified as electricians; ¹²
3. All employees in the Company's lithograph department;
4. All remaining production and maintenance employees of the Company, excluding truck drivers, watchmen, office employees, and factory clerical employees.

Upon the results of the elections in the afore-mentioned groups will depend, in part, our determination of the appropriate unit, or units.

DIRECTION OF ELECTIONS

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 American Can Company, St. Louis, Missouri, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Fourteenth 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 who were employed by the Company during the pay-roll period immediately preceding the date of this Direction of Elections, 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 any who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the elections.

1. The employees in the first voting group described in Section IV, above, to determine whether they desire to be represented by International Association of Machinists, District No. 9, AFL, or by United

¹¹ Excluded therefrom is C. Klug, a machinist, now employed in the assembly department as a machine adjuster and supervisor.

¹² Excluding Mack Scott.

Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither;

2. All employees in the second voting group described in Section IV, above, to determine whether they desire to be represented by International Brotherhood of Electrical Workers, Local No. 1, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither;

3. All employees in the third voting group described in Section IV, above, to determine whether they desire to be represented by Amalgamated Lithographers of America, Local 5, AFL, by United Steelworkers of America, CIO, or by International Printing Pressmen and Assistants' Union of North America, Papercraft Workers' Union, Local No. 409, AFL, or by none;

4. All employees in the fourth voting group described in Section IV, above, to determine whether they desire to be represented by United Steelworkers of America, CIO, or by International Printing Pressmen and Assistants' Union of North America, Papercraft Workers' Union, Local No. 409, AFL, for the purposes of collective bargaining, or by neither.