

In the Matter of VULCAN MOLD AND IRON COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 758 (CIO)

*Case No. 6-R-1153.—Decided July 10, 1945*

*Messrs. Charles E. Walker and Marcus G. Riddell, of Latrobe, Pa., for the Company.*

*Mr. Charles S. Rigby, of Cleveland, Ohio, and Messrs. Walter Gebicki and Frank Sherbuck, of Latrobe, Pa., for the UAW.*

*Mr. Sidney Grossman, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 758 (CIO), herein called the UAW, alleging that a question affecting commerce had arisen concerning the representation of employees of Vulcan Mold and Iron Company, Latrobe, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinsheimer, Jr., Trial Examiner. Said hearing was held at Greensburg, Pennsylvania, on May 9, 1945. The Company and the UAW appeared and participated. All parties<sup>1</sup> were afforded full opportunity

<sup>1</sup> Local 72, International Brotherhood of Foundry Employees, hereinafter called Local 72, a labor organization which formerly represented the Company's employees pursuant to a contract, did not appear. At the hearing the Company objected to the alleged failure on the part of the Regional Director to serve Local 72 with notice of hearing. The record discloses that on April 13 and May 3, respectively, notice of the filing of the petition and notice of hearing were served by registered mail upon S. J. Zehala, the last known regional representative of Local 72 and vice president of the International. At the hearing it developed that Zehala, unknown to the Regional Director, had resigned his offices in March 1945. No other officer of Local 72 or the International was served with formal notice of this proceeding. However, the record shows that on April 2, following the expiration of the contract between Local 72 and the Company, the members of Local 72 voted to dissolve their organization. The officers of Local 72 resigned and became officers of the UAW; and the International was notified on April 17 of the local's dissolution. Inasmuch as Local 72 has evidently ceased to exist, we conclude that it has not been prejudiced by the alleged failure to receive notice of hearing. However, in order to insure that the International not be prejudiced in this proceeding, we shall serve it with a copy of the Decision and Direction of Election, and reserve to it the right to intervene by means of an appropriate motion filed with the Regional Director within 5 days from the date of the Decision and Direction of Election.

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

Vulcan Mold and Iron Company, a Pennsylvania corporation, is engaged in the manufacture of ingot molds for use in the manufacture of steel, copper, brass, and aluminum products, at its Latrobe, Pennsylvania, plant. During the past 12 months, the Company purchased raw materials for use at its Latrobe plant in excess of \$1,000,000 in value, of which approximately 60 percent was secured from sources outside the Commonwealth of Pennsylvania. During the same period, the Company sold finished products manufactured at its Latrobe plant in excess of \$2,500,000 in value, of which approximately 75 percent was shipped to points outside the Commonwealth of Pennsylvania.

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

#### II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 758, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On April 1, 1944, the Company and Local 72, International Brotherhood of Foundry Employees, entered into a collective bargaining agreement for a period of 1 year. The agreement contained the usual automatic renewal clause providing 35 days' notice. Prior to the operative date of the renewal clause, Local 72 notified the Company by letter, dated February 21, 1945, of its desire to terminate the agreement as of the date of its expiration. In its response of February 26, 1945, the Company, pursuant to the terms of the agreement, invited Local 72 to submit proposed changes thereto in the event negotiations for a renewal were contemplated. Thereafter, on April 5, 1945, a committee representing the Company's employees advised the Company of the employees' plan to affiliate with the UAW and requested that a consent election be held. The Company suggested that they petition the Board for the purpose of establishing their position; at the hearing, it refused to grant recognition to the UAW.<sup>2</sup>

<sup>2</sup> Following the dissolution of Local 72, no person manifested an interest in the continuance of its status as bargaining representative of the Company's employees. The Company does not now urge that its agreement with Local 72 precludes a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the UAW represents a substantial number of employees in the unit hereinafter found appropriate<sup>3</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 UAW requests a unit consisting of all production and maintenance employees at the Company's Latrobe, Pennsylvania, plant, excluding office and clerical employees, the plant engineer, the plant superintendent, night superintendent, master mechanic, chief electrician, production machine shop foreman, labor foreman, chief inspector, and all other supervisory employees. The Company generally agrees with the composition of the unit proposed by the UAW. However, the parties are in dispute as to the inclusion or exclusion of the categories discussed below.

*Head storekeeper, pattern shop supervisor, mechanical foreman, and foremen of the melting and the finishing departments* The UAW regards these employees as working group leaders who, unlike other supervisory employees, devote a substantial portion of their time to manual labor in their respective departments, and, therefore, would include them in the unit. The Company would exclude them as supervisory employees. The record discloses that these employees direct the work of from approximately 3 to 25 employees, devote from 15 to 85 percent or more of their time to supervision, and, with the exception of the pattern shop supervisor, earn a substantially higher rate of pay as salaried employees than the other employees in their departments. The pattern shop supervisor earns the same hourly rate as the two other employees classified as pattern makers in his department, because of his doubtful status, he was regarded as encompassed in the previous contract unit. However, the evidence reveals that he directs the work of 8 employees, devotes over 50 percent of his time to supervision, and his recommendations as to the transfer of other employees have been accepted by the Company. Although some of these employees perform manual labor as part of their regular duties, and others may do so of their own volition, all possess authority effectively to recommend the hire, discharge, transfer, or discipline of those under them. Since the head storekeeper, the pattern shop supervisor, mechanical foremen, and foremen of the melting and the finishing departments possess supervisory authority within the meaning of our customary definition, we shall exclude them from the unit.

<sup>3</sup> The Field Examiner reported that the UAW submitted 274 applications for membership cards, of which 268 applications represented the names of persons appearing on the company pay roll, and that of the applications submitted, 97 bore dates in March 1945 and 177 in April 1945 in an alleged appropriate unit consisting of 294 employees

*Production clerks* The UAW would include the three production clerks who report daily to the supervisor of production planning, the Company would exclude these employees as clericals and also regards them as managerial for the reason that they gather information pertaining to production. The production clerks prepare production schedules and check the production flow in certain departments in the plant, maintain periodic inventory records of such production, report the reasons for any interruption in the production process, and in some instances act as expeditors. Although most of their instructions emanate from the supervisor of production planning in the main office building, 75 percent of their time is spent in the plant where they collect data relating to production, and the balance of their time is spent in the plant superintendent's office where they prepare their reports and also receive part of their instructions. Unlike the office employees who are salaried, the production clerks are hourly paid. Notwithstanding the Company's position regarding these employees, it admits that they more appropriately fall within a production and maintenance unit. It is evident that the duties and interests of the production clerks are closely aligned to those of the production employees; we shall, therefore, include them in the unit.<sup>4</sup>

*Storekeepers and watchmen* The UAW would include, and the Company would exclude, the employees classified as storekeeper and watchman. The Company regards these employees as clerical and managerial for the reason that a substantial portion of their time is devoted to clerical duties and they exercise control over valuable materials and supplies. A storekeeper is assigned to a storeroom on each of the Company's three shifts. As hourly employees, they are under the supervision of the head storekeeper who in turn is responsible to the purchasing agent. As part of their responsibilities, they check the receipt of materials against purchase orders, issue tools, supplies, and materials to other employees, and advise the head storekeeper of stores needed for replenishment. In addition, they act as gatekeepers, devote about an hour and a half of their time daily as watchmen and on Sundays make regular plant rounds in such capacity. They do not possess any supervisory authority nor, in our opinion, do they perform any functions that are managerial in character. As admitted by the Company, they are properly part of the production and maintenance unit. It is therefore clear that these employees, performing their duties in the plant under working conditions similar to those of production employees, should be included in the unit as plant clericals; accordingly, we shall include the storekeepers and watchmen.<sup>5</sup>

*Shipping clerk* The UAW would include the shipping clerk who is

<sup>4</sup> See *Matter of Goodman Manufacturing Corporation*, 58 N. L. R. B. 531; *Matter of Chicago Rawhide Manufacturing Company*, 59 N. L. R. B. 1234; *Matter of Kearney & Trecker Corporation*, 60 N. L. R. B. 148.

<sup>5</sup> See *Matter of Carbide and Carbon Chemicals Corporation*, 57 N. L. R. B. 783.

responsible for all shipments made by the Company. The Company would exclude him as a clerical employee. His duties largely consist of arranging for shipping facilities, maintaining various shipping records, and assigning shipping rates to the orders. Although he reports to the supervisor of production planning, he spends most of his time in the shipping office in the plant and the balance of his time in the factory. Like the production and maintenance employees, he earns an hourly rate. The record does not disclose that he possesses any supervisory authority. Although his duties are predominantly clerical in character, we are of the opinion that they are sufficiently identifiable with those of the production and maintenance employees to warrant his inclusion in the unit; we shall, therefore, include the shipping clerk.<sup>6</sup>

*Superintendent's clerk:* The UAW would include the superintendent's clerk who works the major portion of his time under the plant superintendent and part of his time under the master mechanic. Although the Company would exclude him as a clerical employee for the reason that he devotes about 60 percent of his time to clerical work, it is of the opinion that he equally could be included in the production and maintenance unit. As an hourly paid employee, the superintendent's clerk performs a variety of miscellaneous duties in the plant largely routine in character; he transmits time cards and overtime slips bearing supervisors' signatures to the accounting office, prepares work schedules under the direction of foremen, compiles reports relating to part of the plant operations, and prepares samples which he delivers to the office for eventual testing. The record does not disclose that he bears such close relationship with any managerial employee as to warrant the conclusion that his duties may be associated with matters pertaining to labor relations. Since the work of the superintendent's clerk is concerned with operations in the plant, we shall include him in the unit.

*Inspectors:* The UAW would include the three hourly paid inspectors who are responsible to the chief inspector. The Company would exclude them as managerial employees. It employs an inspector on each of its three shifts whose duties consist of inspecting the finished products for size and finish. While they may reject the product or suggest modifications thereof, their primary function is to subject to scrutiny the product, not the worker. Their recommendations therefore cannot be characterized as supervisory or managerial in character. We discern no reason for separating the inspectors from the other production and maintenance employees with which they have been associated for collective bargaining purposes during the past 5 years. Accordingly, we shall include the inspectors in the unit.<sup>7</sup>

We find that all production and maintenance employees of the Company at its Latrobe, Pennsylvania, plant, including inspectors, storekeepers and

<sup>6</sup> See *Matter of Kearney & Trecker Corporation*, 60 N. L. R. B. 148

<sup>7</sup> *Matter of Allis Chalmers Manufacturing Company*, 61 N. L. R. B. 631

watchmen, production clerks, the shipping clerk, and the superintendent's clerk, but excluding all other clerical employees and office employees, the plant engineer, the plant superintendent, night superintendent, master mechanic, chief electrician, melting department foremen, finishing department foremen, mechanical foremen, the head storekeeper, the pattern shop supervisor, the production machine shop foreman, the labor foreman, the chief inspector, 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company has in its employ approximately 18 high school students who work after school. The UAW requests that such employees be permitted to vote. The Company regards the students as temporary employees because of the high rate of turn-over among them, and, therefore, opposes the CIO's request. Although these employees regularly work 4 hours per day and full time on Saturdays, they generally average but 20 hours per week as a result of absenteeism. During their summer vacation they ordinarily work as regular full-time employees. The record discloses that they earn the same wage rate as employees occupying comparable positions, and accumulate seniority and acquire the same employment status as the full-time employees in the plant. In view of their employment as regular part-time workers and their substantial interest in employment conditions in the plant, we shall, in accordance with our usual custom, permit the part-time employees to participate in the election; accordingly, we hold that they are eligible to vote.<sup>8</sup>

#### 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 Vulcan Mold and Iron Com-

<sup>8</sup> *Matter of Hi-Alloy Castings Company*, 60 N. L. R. B. 488.

pany, Latrobe, Pennsylvania, 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 Sixth 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 regular part-time employees, and 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 election, to determine whether or not they desire to be represented by International Union, United Automobile, Aircraft and Agricultural Workers of America, Local 758, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.<sup>10</sup>

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.

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<sup>10</sup> The request of the UAW to be designated on the ballot otherwise than as designated above is hereby directed to the Regional Director to whom the Board has delegated discretionary authority in matters relating to the conduct of the election.