

In the Matter of PHOENIX MANUFACTURING COMPANY *and* LEHIGH VALLEY DIE SINKERS' LODGE #150 OF THE INTERNATIONAL DIE SINKERS' CONFERENCE

Case No. 4-R-1772.—Decided October 26, 1945

Mr. Thomas E. Weaver, of Catasauqua, Pa., for the Company.
Mr. J. G. Meiner, of Cleveland, Ohio, for the Die Sinkers.
Mr. Benj. E. Cook, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Lehigh Valley Die Sinkers' Lodge #150 of the International Die Sinkers' Conference, herein called the Die Sinkers, alleging that a question affecting commerce had arisen concerning the representation of employees of Phoenix Manufacturing Company, Catasauqua, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. The hearing was held at Allentown, Pennsylvania, on July 10, 1945. The Company, and the Die Sinkers appeared and participated.¹ 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

Phoenix Manufacturing Company, an Illinois corporation, is engaged in the manufacture of drop forgings at Catasauqua, Pennsyl-

¹ The International Brotherhood of Blacksmiths, Drop Forgers, and Helpers, A. F. of L., herein called Blacksmiths was served with notice of the proceeding but was not represented at the hearing.

vania. During the year 1944 the Company used at its Catasaquua plant raw materials, principally steel, valued in excess of \$850,000, over 65 percent of which was obtained from points outside the Commonwealth of Pennsylvania. During the same period of time, the Company sold manufactured products valued in excess of \$2,000,000, over 70 percent of which was shipped to points outside that State.

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

II. THE ORGANIZATION INVOLVED

Lehigh Valley Die Sinkers' Lodge #150 of the International Die Sinkers' Conference is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

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

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 Die Sinkers seeks a unit composed of all employees of the Company working on dies or parts of dies used to complete forgings. The Company contends that only a plant-wide unit is appropriate.

The Company's employees have been represented for the purposes of collective bargaining on a company-wide basis for a number of years. The Amalgamated Association of Iron, Steel & Tin Workers, CIO, herein called Amalgamated, was the designated representative through September 1, 1942, at which time, pursuant to an employee-sponsored election, a majority of the employees selected the Federal Local No. 23250, AFL, herein called the Federal, to represent them. The then current contract between the Company and the Amalgamated was assumed by the Federal. Federal continued to act as representative of the employees until November 1944, when a majority of the

² The Field Examiner reported that the Die Sinkers submitted an affidavit that 24 of those employed in the Company's Die Sinking Department were members in good standing in its union on June 18, 1945. The Field Examiner further reported that there were 28 to 30 individuals in the alleged appropriate unit.

employees, in an election sponsored by the American Federation of Labor, voted for the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, AFL, herein called the Blacksmiths, as their bargaining agent. In February 1945, the Blacksmiths assumed the unexpired term of the Federal's contract. At the time of the hearing, the Blacksmiths had submitted to the Company a proposed contract which excluded the die workers.³

The Die Sinkers has filed with the Board three petitions for certification as representative of the employees in the unit it now seeks, all of which the Board dismissed.⁴ However, at the time of such dismissals, the bargaining representative of the production and maintenance employees in a plant-wide unit, unlike the Blacksmiths, was not agreeable to the establishment of a die sinkers' unit. The Company has approximately 285 employees, 25 of whom perform the usual functions associated with the die sinkers' craft, such as making, sinking, trimming and repairing dies and parts of dies. Their group is confined to a separate and distinct department under the separate supervision of a foreman who is also a die maker by trade and familiar with problems related to this craft. The record reveals that since March 1941, the die workers, as a group, have consistently held themselves aloof from identification with or participation in organizational affairs of any one of the currently recognized collective bargaining agents of the production and maintenance employees. The die workers also have steadfastly refused to pay dues to any union except their own, despite contrary requirements in existing collective bargaining contracts covering all the Company's employees, and on two occasions, the die workers caused a work stoppage because of alleged efforts by the Company to force upon them membership in the currently contracting union. Thus, for more than 4 years the die workers, as a group, have neither sought nor received aid from the currently recognized bargaining representative and have consistently sought recognition as a separate bargaining unit.⁵ Moreover, as stated above, the Blacksmiths is agreeable to the Die Sinkers' proposed creation of a separate unit for such employees.⁶

Under the above circumstances, particularly in view of the disclaimer of the Blacksmiths, we are of the opinion that die workers

³ The Blacksmiths waived all claim to representation of the die workers, as set forth in a letter addressed to an agent of the Board and introduced in evidence at the hearing.

⁴ The first petition was dismissed by a formal Decision and Order issued October 2, 1942 (44 N. L. R. B. 1388). The Regional Director Dismissed the second petition (Case 4-R-1167, filed June 14, 1943) and third petition (Case 4-R-1492, filed July 8, 1944), and his action was sustained by the Board on appeal.

⁵ Cf. *Matter of Revere Copper and Brass, Incorporated, Dallas and Ordnance Divisions*, 61 N. L. R. B. 392; *Matter of Moore Drop Forging Company*, 60 N. L. R. B. 494; also *Matter of The Columbus Bolt Workers Company*, 62 N. L. R. B. 978.

⁶ See *Matter of Pacific States Steel Corporation*, 57 N. L. R. B. 1084; see also *John-Manville Products Corporation*, 60 N. L. R. B. 293; *Phelps Dodge Corporation, United Verde Branch*, 56 N. L. R. B. 1560; *Electro-Motive Division of General Motors Corporation*, 53 N. L. R. B. 1325. Cf. *Matter of McGann Manufacturing Company, Inc.*, 57 N. L. R. B. 246.

may constitute a separate bargaining unit or remain a part of the existing plant-wide unit. Before making a final determination with respect to the appropriate unit, however, we shall first ascertain the desires of the employees themselves, as reflected by an election. We shall direct that an election by secret ballot be conducted among all the Company's employees working on dies and parts of dies used in the manufacture and completion of forgings, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of the Direction of Election, subject to the limitations and additions set forth therein, to determine whether or not they desire to be represented by the Die Sinkers.⁷ Upon the results of the election hereinafter directed will depend, in part, our determination of the appropriate unit. If the employees select the Die Sinkers as their bargaining representative, they shall constitute a separate appropriate unit; otherwise they shall remain part of the plant-wide production and maintenance unit presently represented by the Blacksmiths.

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 Phoenix Manufacturing Company, Catasauqua, 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 Fourth Region, Philadelphia, Pennsylvania, 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 die sinkers group described 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 em-

⁷ Since the Blacksmiths has disclaimed any interest in the die workers, we shall not place its name on the ballot.

ployees 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 Lehigh Valley Die Sinkers' Lodge #150 of the International Die Sinkers' Conference, an unaffiliated organization, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.