

In the Matter of F. S. LANG MANUFACTURING COMPANY and
ASSORTMENT WORKERS UNION, LOCAL 383, A. F. L.

Case No. 19-R-1610.—Decided March 8, 1946

Messrs. George D. Leonard and A. L. Lang, of Seattle, Wash., for the Company.

Mr. L. Presley Gill, of Seattle, Wash., for the Assortment Workers Union, Local 383, A. F. L.

Mr. Samuel M. Kaynard, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed on July 18, 1945, by the Assortment Workers Union, Local 383, A. F. L., herein called the Assortment Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of F. S. Lang Manufacturing Company, Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice, before Joseph D. Holmes, Trial Examiner. The hearing was held at Seattle, Washington, on January 18, 1946. The Company and the Assortment Workers 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 opportunity to file briefs with the Board.

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

¹ Although served with notice, Stove Mounters International Union, Local 89, AFL, did not appear or participate in the proceeding.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

F. S. Lang Manufacturing Company is a Washington corporation, having its principal place of business in Seattle, Washington, and is engaged in the manufacture and repair of stoves, furnaces, and bake ovens. During the first 6 months of 1945, the Company purchased raw materials, including steel, pig iron, scrap iron, and coke sand, of an approximate value of \$100,000, practically all of which was purchased outside the State of Washington. The Company during the same period manufactured and sold finished products valued in excess of \$200,000, and approximately 50 percent thereof was shipped to points outside the State of Washington.

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

II. THE ORGANIZATION INVOLVED

Assortment Workers Union, Local 383, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Sometime during April or May 1945, the Assortment Workers requested recognition of the Company as exclusive bargaining representative of the production and maintenance employees of the Company. The Company declined to recognize the Assortment Workers, claiming it had a contract with the Stove Mounters International Union, Local 89, AFL, hereinafter referred to as Local 89, for a term ending March 31, 1946. The Company has been under contract with Local 89 since August 1, 1944.² This contract contains an automatic renewal clause which provides for yearly renewal, in the absence of written notice of termination by either party, at least 30 days prior to April 1 of any year. No such notice has been given.

On June 12, 1945, 25 of the Company's 28 employees served a petition upon the Washington Metal Trades, Inc., which represents the Company in negotiations with labor organizations, in which they declared that they had changed affiliation from Local 89 to the Assortment Workers Union, and that they had designated the Assortment Workers as their sole and exclusive bargaining agent, dis-

²The contract was negotiated for the Company by the Washington Metal Trades, Inc., but executed by the Company.

claiming any rights, benefits, or obligations derived from the Company's contract with Local 89.

The evidence indicates that Local 89 of the Stove Mounters was composed entirely of employees of the Company, and shows that as of June 7, 1945, practically all of the Company's employees had changed their affiliations from Local 89 to the Assortment Workers.

Although there is evidence in the record to indicate that Local 89 is now defunct, it is not necessary to decide that question in order to find that its contract is not a bar to a question of representation. In view of the Assortment Workers' petition herein, the contract would not be a bar, inasmuch as its 1945-46 term is about to expire and the petition may be regarded as timely filed prior to the 1946 automatic renewal date.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Assortment Workers represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

We find, in substantial accord with the agreement of the parties, that all production and maintenance employees of the Company,⁵ excluding all foundry employees, clerical employees, watchmen and teamsters (if any), and all 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.

³ *Matter of Mill B, Inc*, 40 N L R B 346

⁴ The Field Examiner's report and exhibits showed that the Assortment Workers submitted an authorization petition bearing the names of 28 employees; that the names of 25 of these persons appearing on the petition were listed on the submitted Company's pay-roll list which contained the names of 28 persons (including one name stricken out) in the appropriate unit; and that the petition was dated June 7, 1945.

⁵ The parties also agreed to the inclusion of working foremen in the appropriate unit because they had been members of Local 89. However, working foremen in the Company's plant have power to hire and discharge, thus coming within the Board's definition of supervisory employees, and their inclusion would be improper. Mr. Lang testified, however, that he intended to change the existing organizational structure under which the working foremen were heads of their respective departments reporting directly to him, by hiring a superintendent who would be in charge of the three departments. Although the record is not entirely clear, Mr. Lang appeared to imply that the authority of the working foremen would be greatly reduced when a superintendent was brought in. If such a change has since been made, and working foremen no longer fall within the Board's definition of supervisory employees during the eligibility period for the election, they will fall within the appropriate unit.

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.

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 F. S. Lang Manufacturing Company, Seattle, Washington, 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 Nineteenth 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 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 or not they desire to be represented by the Assortment Workers Union, Local 383, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

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