

In the Matter of ANCHOR HOCKING GLASS CORPORATION and DISTRICT
50, UNITED MINE WORKERS OF AMERICA

Case No. 6-R-1262.—Decided March 11, 1946

Messrs. Thorp, Bostwisch, Reed & Armstrong, by Mr. Donald W. Ebbert, of Pittsburgh, Pa., for the Company.

Messrs. Stanley Denlinger, of Akron, Ohio; Joseph C. Gallagher, of Pittsburgh, Pa., for District 50.

Mr. Albert K. Plone, of Camden, N. J., for the GBBA.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a first amended petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Anchor Hocking Glass Corporation, South Connellsville, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. The hearing was held at Uniontown, Pennsylvania, on November 30, 1945. The Company, District 50, and Glass Bottle Blowers Association of the United States and Canada, AFL, herein called the GBBA, 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 GBBA moved at the hearing for dismissal of the petition. The Trial Examiner reserved ruling upon the motion for the Board. For reasons stated in Section IV, *infra*, the motion is denied. 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 Amalgamated Lithographers of America, A. F. of L., filed a written motion to intervene in the proceedings, but did not appear or participate therein. The employees represented by that organization are not claimed by either District 50 or the GBBA.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Anchor Hocking Glass Corporation, a Delaware corporation with its home office located at Lancaster, Ohio, operates plants in various States of the United States. The Connellsville, Pennsylvania, plant of the Company, with which we are concerned herein, consists of a Closure Division wherein the Company is engaged exclusively in the manufacture of metal and plastic caps and closures for glass containers, and a Glass Division which contains glass making facilities. The Company uses annually at its Closure Division raw materials valued at more than \$700,000, approximately 85 percent of which is received from points outside the Commonwealth of Pennsylvania. The annual sales of the Closure Division amount to more than \$800,000 in value, of which approximately 85 percent is sold and shipped to customers outside the Commonwealth.

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

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, and Glass Bottle Blowers Association of the United States and Canada, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to District 50 as the exclusive representative of certain of its employees, asserting that these employees are represented by the GBBA. Although an existing 1-year contract between the Company and the GBBA, dated September 1, 1945, governs the relationship between these parties, neither asserts it as a bar to a current determination of representatives.²

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit alleged by it to be appropriate.³

²The record indicates that District 50 notified the Company of its representation claim on July 24, 1945, prior to the execution of the above-mentioned contract between the Company and the GBBA. In view of the timeliness of this notice, the contract does not, in any event, act as a bar to this proceeding.

³The Field Examiner reported that District 50 submitted 412 designations. The record indicates that there are approximately 1,120 employees in the unit asserted by it as appropriate. He further indicated that the GBBA relies upon its contracts with the Company for the establishment of its interest.

For reasons stated in *Matter of Buffalo Arms Corporation*, 57 N. L. R. B. 1560, we find no merit in the Company's objection to the Field Examiner's report.

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.

A. Contentions of the parties

District 50 seeks a unit comprised of all production and maintenance employees of the Company engaged at its Closure Division, excluding lithographers, automatic feeding and flowing process operators, mold makers, office clerical employees, plant-protection employees, foremen, assistant foremen, and all other supervisory employees. The GBBA and the Company, although in accord with District 50 with respect to the specific composition of the proposed unit, assert that it is inappropriate, contending that employees at both the Closure and the Glass Divisions comprise the appropriate unit.

B. Functional considerations

The Company's Connellsville operations are located on a tract of land having an area of approximately 45 acres. The Closure Division is composed of approximately 5 buildings, and the Glass Division consists of several buildings within the same area. There is one railroad siding from the main line of the railroad which runs to a shipping department shed which is used jointly by the 2 divisions.

The general offices of the Connellsville operations are located in a building separate from those used by either division, and is maintained for the use of both, containing a general employment office, a pay-roll department, a billing department, and a cost accounting department. The boiler and power facilities of the Company are also used in common by the 2 divisions. As previously noted, both divisions use the same shipping department which is located in a Glass Division building; conversely, the Glass Division storage department is located in a Closure Division Building. The record indicates that, within the 6 months preceding the hearing herein, there were approximately 100 transfers of employees between the 2 divisions, and that, approximately 8 months prior to the hearing, 100 employees laid off by the Closure Division were absorbed by the Glass Division.

However, each division is under the supervision of a plant manager who is directly responsible to the home office of the Company. Moreover, a separate seniority list is maintained for the employees of each division, although seniority at both divisions is accumulated under certain circumstances. There are at present separate entrance and exit gates for the employees of each division. In addition, although the

bulk of the Company's production of containers at the Connellsville operations is also complemented by an equivalent order for caps or closures from the same customers, the Closure Division also produces and sells caps and closures independent of orders for containers. Finally, although general labor policies of the Company are formulated at the home offices, specific implementation of these policies, as well as of personnel and production policies, is made by the plant (or division) managers who are functionally independent of each other.

It appears from the foregoing that there exists a substantial degree of functional integration between the two divisions. On the other hand, in comparison with the total number of employees engaged at each division,⁴ the number of transfers between the two is relatively slight. Furthermore, the administration of each division is independent of the other. Finally, it is apparent from the nature of the products manufactured at the two divisions that the skills of the employees engaged by each are different. These circumstances, coupled with the fact that a separate seniority list is maintained by each division, tend to support the contention of District 50 that each division could properly constitute a separate unit. We conclude, therefore, that, from a functional viewpoint, the employees of each division may properly comprise either a separate unit, or be combined within a single over-all unit.

C. Collective bargaining history

The GBBA and the Company, however, insist that, despite these circumstances, the history of collective bargaining points inescapably to the conclusion that only a single over-all unit is appropriate, citing *Matter of Clarksburg Paper Company*.⁵

The record indicates that, in 1936, the GBBA was recognized as the collective bargaining representative of the production employees of the Capstan Glass Company. Sometime thereafter, the Company assimilated this employer's facilities, which ultimately became the Glass Division.

Until the early part of 1941, the Company operated a closure plant in Long Island, New York. At that time it disposed of this plant, and moved much of its machinery and some of its personnel⁶ to Connellsville, where it erected the Closure Division adjacent to the Glass Division.

⁴ There are approximately 1,150 employees engaged at the Glass Division

⁵ 64 N. L. R. B. 1319. See also *Matter of Bethlehem-Fairfield Shipyard, Incorporated*, 58 N. L. R. B. 579, and cases cited therein. See also *Matter of P. Lorillard Company*, 58 N. L. R. B. 1112.

⁶ Several supervisory employees and approximately 25 non-supervisory employees were transferred.

On April 7, 1941, the Company commenced bottle making operations at its Glass Division, which then employed approximately 250 workers. Two weeks later, the GBBA claimed the right to represent the production and maintenance employees at both divisions. Evidence was adduced to the effect that, on April 21, 1941, the Company and the GBBA executed a closed-shop agreement for a term ending Septemebr 1, 1941, whereby the Company recognized the GBBA as the representative of these employees, after the latter produced evidence indicating that it represented approximately 225 of the 300 employees then comprising the unit.

On July 11, 1941, pursuant to the request of the GBBA, the Company and the GBBA executed a separate but substantially identical collective bargaining agreement covering only the employees of the Closure Division. This agreement also contained a closed-shop provision, and provided for a term ending September 1, 1941.

Upon the expiration of these contracts, new 1-year closed-shop agreements, dated September 1, 1941, were executed between the parties separately covering the employees at the Closure and the Glass Divisions. This procedure was followed in 1942 and in the succeeding years up to and including 1945. Although in 1941 and 1942 the parties negotiated separately for employees of each division, the resulting agreements were substantially identical. In 1943 and in subsequent years, moreover, the parties jointly negotiated substantially identical closed-shop agreements covering the employees of the two divisions.

D. Conclusion

The GBBA and the Company assert, with justification, that this bargaining history evidences the fact that the parties considered and treated the employees of the two divisions as a single unit.⁷ However, we note that the original agreement was made when the Company employed only 300 workers at its Connellsville operations, whereas it now engages more than 2000 employees. Moreover, the record contains no evidence that, except prior to the April 1941 agreement, the GBBA was ever called upon to demonstrate its majority status. In addition, the employees of both divisions were required throughout the years to become members of the GBBA under the terms of the closed-shop provisions in each of the contracts. Thus, we are not satisfied that the mass of the Company's employees have ever been accorded an opportunity to indicate the type of representation they desire. We are of the opinion that, under these circumstances, although there was a 5-year history of collective bargaining upon a two-division basis,

⁷ See *Matter of Clarksburg Paper Company, supra*.

such collective bargaining history cannot be considered controlling.⁸ Consequently, we are persuaded that the employees of each division may properly constitute separate collective bargaining units, or be consolidated into a single grouping.

We shall, therefore, make no determination at this time with respect to whether or not the Closure Division employees comprise a separate appropriate unit, but shall rest our determination, in part, upon the results of the election hereinafter directed.

We shall direct that the question affecting commerce which has arisen be resolved by an election by secret ballot among all production and maintenance employees of the Company engaged at the Closure Division, of its Connellsville, Pennsylvania, plant, excluding lithographers, automatic feeding and flowing process operators, mold makers, office clerical employees, plant-protection employees, foremen, assistant 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, 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 in the Direction, to determine whether they desire to be represented by District 50, the GBBA, or by neither of these labor organizations.

In the event the employees select District 50, they will be taken to have indicated a desire to be bargained for as a separate unit. If they select the GBBA, they will be taken to have indicated a desire to continue to be bargained for as part of the existing unit represented by that labor organization.

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 Anchor Hocking Glass Corporation, South Connellsville, 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

⁸ See *Matter of St. Johns River Shipbuilding Company*, 59 N. L. R. B. 415. Cf. *Matter of Sinclair Refining Company*, 64 N. L. R. B. 611. In the latter case the Board refused to permit certain groups to split off from a more inclusive unit where, in addition to other circumstances, the contracting union was able to demonstrate its majority status at all material times during the expansion of the unit and its contracts merely contained maintenance-of-membership provisions.

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 all production and maintenance employees of the Company engaged at its Closure Division, excluding lithographers, automatic feeding and flowing process operators, mold makers, office clerical employees, plant-protection employees, foremen, assistant 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, 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 they desire to be represented by District 50, United Mine Workers of America, or by Glass Bottle Blowers Association of the United States and Canada, AFL, for the purposes of collective bargaining, or by neither.

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