

In the Matter of UNITED ENGINEERING AND FOUNDRY COMPANY and INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL NO 398, A. F. of L.

*Case No. 6-R-1322.—Decided May 16, 1946*

*Mr R C. Douthitt*, of Pittsburgh, Pa., for the Company.

*Mr. Joseph A Padway*, by *Mr. Robert A. Wilson*, of Washington, D. C., for the Molders.

*Mr. John J. Brownlee*, of Pittsburgh, Pa., and *Mr John Grajciar*, of Sharon, Pa , for the Steelworkers.

*Mr. Elmer P. Freischlag*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

Upon an amended petition duly filed by International Molders & Foundry Workers Union of North America, Local No. 398, A. F. of L., herein called the Molders, alleging that a question affecting commerce had arisen concerning the representation of employees of United Engineering and Foundry Company, New Castle, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph Lepie, Trial Examiner. The hearing was held at New Castle, Pennsylvania, on March 19, 1946. The Company, the Molders, and United Steelworkers of America, C. I. O., herein called the Steelworkers, 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. At the hearing, the Steelworkers moved to dismiss the petition on the ground that an existing contract is a bar to a present determination of representatives. The motion was referred to the Board. For reasons stated hereinafter, the motion is hereby 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.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

United Engineering and Foundry Company is a Pennsylvania corporation having plants in Youngstown and Canton, Ohio, and Vandergrift, Pittsburgh, and New Castle, Pennsylvania. At its New Castle plant, which is alone involved herein, the Company is engaged in the manufacture of rolling mill equipment, forging presses, extrusion presses, and auxiliary rolling mill equipment for rolling mills. During the year 1945, the Company purchased for use at the New Castle plant raw materials and supplies valued in excess of \$500,000, over 50 percent of which represented shipments to the New Castle plant from points outside the Commonwealth of Pennsylvania. During the same period, the Company manufactured products at the New Castle plant amounting in value to over \$500,000, more than 50 percent of which represented shipments to points outside the Commonwealth.

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

#### II THE ORGANIZATIONS INVOLVED

International Molders & Foundry Workers Union of North America, Local No. 398, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

#### III THE QUESTION CONCERNING REPRESENTATION

By letter dated November 30, 1945, the Molders advised the Company that it represented a majority of its production and maintenance employees in the foundry at the New Castle plant, and requested recognition and the commencement of collective bargaining. The Company replied by letter dated December 5, 1945, that it was obligated to recognize the Steelworkers as collective bargaining representative as the result of a previous certification by the Board. On December 5, 1945, the Molders filed its petition with the Board. The Steelworkers asserts that a collective bargaining contract with the Company, effective as of January 26, 1945, is a bar to this proceeding.

Following certification by the Board on August 24, 1944,<sup>1</sup> the Steelworkers and the Company entered into a collective bargaining contract covering employees in the foundry division for a term of 1 year, from January 26, 1945, renewable automatically from year to year thereafter unless written notice of a desire to terminate the agreement was served by either party at least thirty (30) days before the expiration of any annual period. No notice of termination was served by either party within the time provided therefor. However, as stated above, the Molders filed its petition with the Board more than 30 days prior to January 26, 1946, the terminal date of the first contract year. Under accepted principles, therefore, the contract cannot operate as a bar.<sup>2</sup>

The Steelworkers contends, however, that because of the delays incident to reconversion, only a small number of the normal complement of men were employed in the foundry during several months of the contract year, and that it has not had an adequate opportunity as the result thereof to demonstrate to the employees its effectiveness as a bargaining agent.<sup>3</sup> Accordingly, it requests that the principle enunciated in the *Allis-Chalmers* case<sup>4</sup> be extended to the present situation so that it may have a reasonable time to demonstrate its bargaining strength in the reconverted plant of the Company.

We find the contention to be without merit. The *Allis-Chalmers* case stands for the principle that a newly recognized or certified representative is entitled to a reasonable opportunity to obtain for the employees the benefits of exclusive representation, and when a delay in obtaining such benefits is caused by resort to the orderly processes of governmental agencies, the Board will not proceed with a new determination of representatives. In the instant case, there was no resort to any governmental agency. Furthermore, the Steelworkers has enjoyed the benefits of a collective bargaining contract for a full contract term.<sup>5</sup> To hold the agreement herein to be a bar would operate to deny the right of the employees to select a collective bargaining representative of their own choice for a period beyond the contract term, although the agreement cannot be interpreted as guaranteeing to the Steelworkers the representation of a normal complement of employees during the contract period. Under the circumstances, we find that the *Allis-Chalmers* doctrine is inapplicable and that

<sup>1</sup> The certification resulted from an election directed by the Board in *Matter of United Engineering and Foundry Company*, 57 N. L. R. B. 1208.

<sup>2</sup> See *Matter of Marine Basin Company*, 65 N. L. R. B. 970, and cases cited therein.

<sup>3</sup> Employment in the unit covered by the contract has fluctuated as follows:  
1944—August, 429; September, 377; October, 388, November, 351, December, 367.  
1945—January, 372, February, 384, March, 392, April, 399, May, 347; June, 125, July, 12;  
August, 12; September, 38, October, 89; November, 141; December, 180.  
1946—January, 261, February, 282, March, 307

<sup>4</sup> *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306.

<sup>5</sup> See *Matter of International Harvester Company—Canton Works*, 66 N. L. R. B. 527; *Matter of Merimac Mills Company*, 63 N. L. R. B. 781.

the January 26, 1945, agreement between the Steelworkers and the Company is not a bar.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Molders represents a substantial number of employees in the unit hereinafter found appropriate.<sup>6</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

We find, substantially in accordance with the agreement of the parties, that all production and maintenance employees of the foundry division of the Company's New Castle plant, including carpenters, outside laborers and weighmasters, but excluding clerical employees, laboratory employees, pattern shop employees, policemen, guards, cafeteria employees, inspectors, expeditors, timekeepers, executive and salaried employees, foremen, gang leaders, 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.<sup>7</sup>

#### 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 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.<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,

<sup>6</sup> The Field Examiner reported that the Molders submitted 164 cards, all of which bore the names of employees listed on the Company's pay roll. There are approximately 280 employees in the appropriate unit.

The Steelworkers relies on its contract of January 26, 1945, with the Company, to establish its interest in this proceeding.

<sup>7</sup> This unit is substantially the same as that previously found appropriate by the Board in *Matter of United Engineering and Foundry Company, supra*.

<sup>8</sup> At the hearing, the Steelworkers moved to dismiss the petition on the ground that there was pending before the Board an appeal from the Regional Director's refusal to issue complaints against the Company involving alleged unfair labor practices. The motion was referred to the Board. On April 9, 1946, the Board sustained the action of the Regional Director, in *Cases Nos. 6-C-908 and 6-C-914*. The motion is consequently denied.

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 United Engineering and Foundry Company, New Castle, 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 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 they desire to be represented by International Molders & Foundry Workers Union of North America, Local No. 398, A. F. of L., or by United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.

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