

In the Matter of THE DUFF-NORTON MANUFACTURING COMPANY and
DUFF-NORTON INDEPENDENT UNION

In the Matter of THE DUFF-NORTON MANUFACTURING COMPANY and
PITTSBURGH DIE SINKERS' LODGE No. 50 OF THE INTERNATIONAL DIE
SINKERS' CONFERENCE

*Cases Nos. 6-R-1301 and 6-R-1357, respectively.—
Decided May 16, 1946*

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

Mr. Robbin B. Wolf, of Pittsburgh, Pa., for the Independent.

Mr. Walter T. Lynch, of Cleveland, Ohio, for the Die Sinkers.

Mr. John J. Brownlee, of Pittsburgh, Pa., for the U. S. A.

Mr. Charles B. Slaughter, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Duff-Norton Independent Union,¹ herein called the Independent, and by Pittsburgh Die Sinkers' Lodge No. 50 of the International Die Sinkers' Conference, herein called the Die Sinkers,² alleging that questions affecting commerce had arisen concerning the representation of employees of The Duff-Norton Manufacturing Company, Pittsburgh, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing³ upon due notice before W. G. Stuart Sherman, Trial Examiner. The hearing was held at Pittsburgh, Pennsylvania, on March 4, 1946. The Company, the Independent, the Die Sinkers, and the United Steelworkers of Amer-

¹ The Independent filed an amended petition on February 26, 1946.

² At the hearing the Trial Examiner granted the Die Sinkers' motion to intervene in Case No. 6-R-1301.

³ The cases involved in these proceedings were consolidated by order of the Board dated March 4, 1946. All the parties agreed at the hearing to waive notice of hearing in Case No. 6-R-1357.

ica, affiliated with the Congress of Industrial Organizations, appearing on behalf of its Local 1811, herein called the U. S. A.,⁴ 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. 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Duff-Norton Manufacturing Company is a Pennsylvania corporation with its principal office in Pittsburgh, Pennsylvania, and sales offices in Chicago, Illinois, New York City, St. Louis, Missouri, and San Francisco, California. It owns and operates plants in Pittsburgh, Pennsylvania, and Coaticook, Province of Quebec, Canada. We are here concerned with certain employees of the Pittsburgh, Pennsylvania, plant. The Company is engaged in the manufacture, sale, and distribution of lifting jacks, drop forgings, and special lifting devices. During the year 1945 the approximate value of raw materials purchased for use at the Company's Pittsburgh plant exceeded \$1,000,000, of which approximately 65 percent was purchased outside the Commonwealth of Pennsylvania. During the same period the Company shipped from its Pittsburgh, Pennsylvania, plant its products valued in excess of \$1,000,000, of which approximately 85 percent was sold and 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 ORGANIZATIONS INVOLVED

Duff-Norton Independent Union is an unaffiliated labor organization admitting to membership employees of the Company.

Pittsburgh Die Sinkers' Lodge No. 50 of the International Die Sinkers' Conference is a labor organization admitting to membership employees of the Company.

United Steelworkers of America, Local No. 1811, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

⁴ At the hearing the Trial Examiner granted the Motion of the U. S. A. to intervene in these proceedings

III. THE QUESTIONS CONCERNING REPRESENTATION

On October 29, 1945, the Independent filed a petition with the Regional Director of the Sixth Region seeking certification as representative of the Company's hourly paid employees. On November 8, 1945, the Independent requested that the Company recognize it as the exclusive bargaining representative of these employees, but the Company refused on the grounds that the question should be resolved by the Board.

On March 4, 1946, the Die Sinkers filed a petition seeking certification as representative of employees of the Company's die sinking department.

At the hearing, the U. S. A. argued that these proceedings are barred by reason of a contract, effected between it and the Company in the form of an interim agreement which expires June 15, 1946.

On January 6, 1944, the U. S. A. was certified by the Board as collective bargaining representative of the Company's production and maintenance employees, pursuant to an election directed by the Board in a prior proceeding.⁵ Thereafter on May 5, 1944, the U. S. A. and the Company entered into a collective bargaining agreement. This contract provided, in effect, that it should continue until changed or terminated by either party at any time by the giving of 20 days' notice. On March 1, 1945, the Board certified the U. S. A. as collective bargaining representative of the employees in the Company's Die Sinking Department by virtue of an election previously directed by the Board.⁶ Subsequently on April 27, 1945, the U. S. A. and the Company entered into a supplemental agreement which stipulated that the provisions of the May 5, 1944, contract would thereafter be applicable to the employees of the Die Sinking Department.

On September 24, 1945, the U. S. A., pursuant to the 20-day termination clause, notified the Company of its desire to terminate the May 5, 1944, contract, as supplemented by the April 27, 1945, agreement, and negotiate for the new contract. Thereafter on October 13, 1945, the parties entered into a 30-day supplemental agreement extending the May 5, 1944, contract and its April 27, 1945, supplement.⁷

From January 2, 1946, until March 2, 1946, the U. S. A. sponsored a strike among the Company's production and maintenance employees. On the latter date, when the parties reached a settlement of the strike issues, they entered into an interim agreement effective March 4, 1946, which extended the terms of the May 5, 1944, contract, and the supplements thereto, until June 15, 1946, and provided for wage increases and the

⁵ 53 N. L. R. B. 1064.

⁶ 60 N. L. R. B. 186.

⁷ On December 8, 1945, and January 18, 1946, additional supplemental agreements were effected between the U. S. A. and the Company. The latter agreement extended the May 5, 1944, contract and its April 27, 1945, supplement until March 15, 1946.

return to work of all employees without discrimination. As stated above, the U. S. A. asserts that the March 4, 1946, interim agreement constitutes a bar to this proceeding. However, inasmuch as the Independent's petition of October 29, 1945, was timely filed, we find that the subsequent interim agreement of May 4, 1946, does not operate as a bar.⁸

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Independent and the Die Sinkers each represents a substantial number of employees in the alleged appropriate unit.⁹

We find that questions affecting commerce have 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 UNITS

At the hearing the Independent took the position that the appropriate unit should be composed of "all production and maintenance employees," which would include, *inter alia*, watchmen (or guards) and employees of the die sinking department. In the alternative the Independent stated that, in the event the Board insists on its previous ruling wherein the die room employees were held to constitute a separate unit,¹⁰ then the appropriate unit should exclude these employees. The Die Sinkers, on the other hand, seeks only a unit of employees working on dies or parts of dies, excluding the foreman. The U. S. A. takes the position that the Die Sinkers and watchmen (or guards) should be included in a unit of all production and maintenance employees. The Company, while generally taking no position in these proceedings, did, however, contend that the watchmen (or guards) should be excluded from a production and maintenance unit on the ground that their duties are confidential.

Watchmen (or guards):¹¹ These employees were excluded from coverage under the contract, and supplements thereto, between the Company and the U. S. A. because they were militarized. However, upon the cessation of hostilities in World War II, the watchmen were demilitarized and they now wear no uniforms nor firearms. Their duties require that they patrol the plant on schedule and watch for fires, broken pipes, and other defects that might cause damage to the property; they report thefts to the

⁸ A question concerning representation was raised with respect to the die sinking department when the Independent filed its petition on October 29, 1945.

⁹ A Field Examiner reported that the Independent submitted 158 application cards, 124 of which were checked against the Company's pay roll for the period ending December 31, 1945, and that the Field Examiner also reported that the Die Sinkers submitted a signed petition dated January 7, 1946, bearing the names of 5 employees, 4 of which were checked against the Company's pay roll for the period ending December 31, 1945. There are approximately 11 employees in the alleged appropriate unit.

¹⁰ See footnote 6, *supra*.

¹¹ The Company uses the terms "guards" and "watchmen" interchangeably. We shall refer to them as "watchmen."

City Police Department and the personnel manager; any observations of unsafe conditions and infractions of the company rules they report to the personnel manager; they observe employees punching in and out at the time clocks, and report any irregularities to the supervisors; they advise the personnel manager as to any employees who leave the plant at odd hours or report late for work. Two of the watchmen alternate at the gate, where they check ingress and egress of trucks, their license numbers and drivers' names, and, if possible, determine what items are removed from the plant area by vehicles of outside distributors. We do not agree that the watchmen fall within our definition of confidential employees.¹² However, inasmuch as the duties of the watchmen are monitorial in nature, we shall exclude them from the unit hereinafter found appropriate.¹³

Die Sinking Department: The Die Sinkers seeks a unit of employees working on dies or parts of dies, excluding the foreman. The U. S. A., which currently represents these employees, and the Independent would include them in a unit with the production and maintenance employees. We have previously held in proceedings involving the same parties that the employees working on dies or parts of dies should constitute a separate unit.¹⁴ Inasmuch as there has been no change in the duties, classifications, and physical location of the employees of the die sinking department, we shall not disturb our previous finding, and, therefore, hold that employees working on dies or parts of dies, excluding the foreman, constitute a separate appropriate unit.

We find that the following groups, excluding all salaried employees, watchmen (or guards), foremen, assistant foremen, and all other supervisory employees¹⁵ with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

- (1) All production and maintenance employees.
- (2) All employees working on dies or parts of dies, excluding the foreman.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in

¹² See *Matter of Ford Motor Company (Chicago Branch)*, 66 N. L. R. B. 1317.

¹³ See *Matter of Kelsey-Hayes Wheel Company*, 62 N. L. R. B. 421.

¹⁴ *Matter of Duff-Norton Manufacturing Company*, 48 N. L. R. B. 1148, *Matter of The Duff-Norton Manufacturing Company*, 60 N. L. R. B. 186.

¹⁵ All the parties, including the Company, agreed to exclude from the unit four gang leaders, who, although hourly paid, have certain limited supervisory authority. Furthermore, they have not been included in the agreements between the U. S. A. and the Company. We shall, accordingly, exclude them.

the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

We shall grant the Independent a place on the ballot in the election directed in the Die Sinkers' group with permission to withdraw therefrom by notifying the Regional Director within ten (10) days after the issuance of this Decision and Direction of Elections.

DIRECTION OF ELECTIONS

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 The Duff-Norton Manufacturing Company, Pittsburgh, Pennsylvania, elections 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 units 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 with respect to the employees described in paragraph (1) of our finding in Section IV, *supra*, whether they desire to be represented by the Duff-Norton Independent Union or by United Steelworkers of America, Local 1811, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither; and to determine with respect to the employees in the unit described in paragraph (2) of our finding in Section IV, *supra*, whether they desire to be represented by Pittsburgh Die Sinkers' Lodge No. 50, of the International Die Sinkers' Conference, or by United Steelworkers of America, Local 1811, affiliated with the Congress of Industrial Organizations, or by the Duff-Norton Independent Union, for the purposes of collective bargaining, or by none of said organizations.

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