

In the Matter of TALON, INC., EMPLOYER and INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE NO. 110, PETITIONER

*Case No. 6-R-1355.—Decided August 2, 1946*

*Messrs. Fred R. Davis, A. J. Gilles, William F. McIntyre, and John J. Williams, of Meadville, Pa., for the Employer.*

*Mr. A. G. Skundor, of Pittsburgh, Pa., for the Petitioner.*

*Mr. Joseph A. Padway, by Mr. Robert A. Wilson, of Washington, D. C., and Mr. William Sturm, of Toledo, Ohio, for the SFU.*

*Mr. John A. Nevros, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Meadville, Pennsylvania, on May 20, 1946, before Joseph Lepie, Trial Examiner. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing, the SFU moved to dismiss the petition on various grounds. The Trial Examiner reserved ruling on this motion for the Board. For reasons stated hereinafter, the motion is hereby denied.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Talon, Inc., a Pennsylvania corporation, is engaged at its Meadville, Pennsylvania, plant in the manufacture of slide fasteners. During 1945, the Employer purchased for its Meadville plant approximately \$7,313,000 worth of raw materials and supplies, of which about 80 percent came from sources outside the Commonwealth of Pennsylvania. During the same period, the Employer's Meadville plant manufactured products valued at approximately \$22,370,000, of which 85 percent represented shipments to points outside the Commonwealth.

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

## II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization claiming to represent employees of the Employer.

Slide Fasteners Union No. 20230, herein called the SFU, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of the operate-set-up employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

At the hearing, the SFU moved to dismiss the petition on the grounds, among others, that: (1) a jurisdictional dispute exists between the Petitioner and the SFU; (2) the unions should be left to adjust the matter between themselves because the chances of reconciliation between the International Association of Machinists, herein called the IAM, and the American Federation of Labor herein called the AFL, would be lessened and undesirable repercussions in other plants would result through Board action other than a dismissal; (3) the General Labor Relations Agreement of January 7, 1946, herein called the master contract, to which the Employer and several unions, including the Petitioner and the SFU, are parties, and the SFU's supplement thereto constitute a bar to an election; and (4) the Petitioner is estopped from asserting any claim to the employees in issue by reason of the master contract.

The alleged jurisdictional dispute between the unions in this case had its genesis in (1) the creation by the Employer on December 26, 1944, of the new job classification of operate-set-up man by combining the duties of the operators and the set-up men working on the No. 3 Special Baird Slider Fabricating Presses,<sup>1</sup> and (2) in the inability of the SFU and the Petitioner, who were then affiliated with the AFL and were recognized representatives of the operators and the set-up men, respectively, to resolve between themselves the question of jurisdiction over this classification. Although the SFU thereafter referred the matter to the AFL for determination, and subsequently received a letter dated December 18, 1945, from President William Green, purporting to award jurisdiction over these employees to it, the Petitioner not only does not recognize the award<sup>2</sup> but has disaffiliated itself from the AFL. In view of such disaffiliation, it is clear that no jurisdictional dispute exists.<sup>3</sup> However, the SFU argues further in this connection

<sup>1</sup> Herein called the No. 3 presses.

<sup>2</sup> The Petitioner did not see this letter until the hearing on May 20, 1946.

<sup>3</sup> See *Matter of The Cleveland Welding Company*, 67 N. L. R. B. 223.

that in the interest of preventing industrial unrest and of not hindering a rapprochement between the AFL and the IAM, the Board should dismiss the petition and leave the parties to adjust the matter between themselves. We do not agree. The Board has frequently proceeded to an election in the face of a dispute between two affiliates where the parent organization could not secure compliance with its orders from the disputants.<sup>4</sup> Consequently, where, as here, one of the disputants is clearly not presently affiliated with the parent and there is no indication that its return to the parent is likely within the foreseeable future, the need for an election is made increasingly clear. Moreover, the Board, by directing an election, is not seeking to determine the jurisdiction to be enjoyed by either of these unions; it is merely invoking the administrative processes of the Act where in its opinion effective resolution of the existing conflict cannot otherwise be had.

Nor is there any merit to the SFU's further contention that the master contract and the SFU's supplement thereto bar an election, and that the Petitioner is estopped by the master contract from asserting any claim to the employees in issue.

The master contract is effective for a period of 2 years from January 8, 1946, and is subject to automatic renewal annually thereafter. It was entered into on January 7, 1946, by the Employer and 14 unions, including the Petitioner and the SFU, and provides for a union shop, with the Employer recognizing each of the 14 unions party thereto as exclusive bargaining agents for employees falling within their respective jurisdictions. At that time all except the Petitioner were in good standing with the AFL. The SFU contends that this contract and its supplementary agreement of November 30, 1945, cover the operate-set-up men. It is clear, however, from an examination of these contracts, that they do not make specific provision for the representation of the operate-set-up men. Nor is there any basis for concluding, as the SFU contends, that these agreements establish its representative status with respect to these employees by implication drawn from the clear intent of the parties to recognize the jurisdiction of the SFU over the operation of machines.

With respect to the question of estoppel raised by the SFU, the pertinent parts of the master contract are the preamble and Section 4. The preamble lists the Petitioner, despite its suspension from the AFL at the time, as a "local union affiliated with the American Federation of Labor," and Section 4 reads as follows:

*Jurisdictional Disputes.*—The unions agree that jurisdictional disputes shall not interfere with plant production.

<sup>4</sup> See *Matter of Foote & Davies*, 66 N. L. R. B. 416.

The Company recognizes jurisdiction as awarded by the American Federation of Labor, unless exceptions are mutually agreed to between the Company and the Union in the respective supplementary agreements.<sup>5</sup>

It is the position of the SFU that the Petitioner, by virtue of Section 4, has agreed that in the event of a jurisdictional dispute between any of the unions parties to the contract, the decision of the AFL shall be final and binding, and the present disaffiliation of the Petitioner is immaterial. The Petitioner states, however, that in view of its disaffiliation, it does not recognize any awards made by the AFL.

As already indicated, a letter dated December 18, 1945, purporting to award jurisdiction over the operate-set-up men to the SFU, was sent to the SFU by William Green, President of the AFL.<sup>6</sup> This letter was issued in the interval between the suspension of the IAM by the AFL Executive Council, in the latter part of October 1945, and the referendum held by the IAM in January, 1946, which resulted in the severance of its ties with the AFL. In view of the IAM's disaffiliation from the AFL, we are unable to agree that an award has been made which is binding upon the Petitioner. It is apparent from the nature of the master contract that continued affiliation by the IAM with the AFL is a prerequisite to the effectiveness of such an award. To give the contract the effect for which the SFU contends would produce the extraordinary result of causing a labor union and its members to submit their dispute to their opponents for judgment and decision.<sup>7</sup> Under these circumstances we can perceive no basis for finding that the Petitioner is estopped by the provisions of the master contract from seeking a determination of representatives.

Accordingly, inasmuch as there is at present no jurisdictional dispute, and no binding jurisdictional award, and inasmuch as the master contract and the SFU's supplement thereto, contrary to the position of the SFU, do not directly or by implication include within their coverage the employees here involved, we are of the opinion that the motion to dismiss on the above-mentioned grounds is without merit.<sup>8</sup>

<sup>5</sup> The only existing supplementary agreement between the Employer and the Petitioner was dated January 2, 1946, 5 days before the master contract, and was incorporated by reference into the master agreement. The supplementary agreement affects no modification of Section 4 of the master contract.

<sup>6</sup> The Employer was first notified on January 7, 1946, by the SFU that it "had received an award," but was not shown the letter until March 12, 1946.

<sup>7</sup> *Accord Warehousemen's Union v. N. L. R. B.*, 121 F. (2d) 84, 88-92 (App. D. C.), enfg as mod. 19 N. L. R. B. 778, cert. den. 314 U. S. 674.

<sup>8</sup> It is not contended, nor is the master contract susceptible of the interpretation, that the Petitioner has, within the meaning of the *Briggs Indiana doctrine* (*Matter of Briggs Indiana Corporation*, 63 N. L. R. B. 1270), undertaken by this contract not to seek to represent these employees.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, 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 Petitioner seeks to embrace the operate-set-up men and their group leaders within its existing unit comprising machinists, tool and die makers, maintenance workmen, repair machinists, and set-up men. The SFU opposes the Petitioner's unit contention, and urges that the only grouping appropriate herein is one including these employees within its unit consisting of all machine operators except the operate-set-up men.<sup>9</sup> Neither union seeks to represent these employees in a separate unit. The Employer takes no position on the unit issue.

The operate-set-up men operate the No. 3 Special Baird Slider Fabricating Presses which fabricate the slider part of the slide fastener to approximately two-thirds of completion in one of the intermediate steps in a highly integrated manufacturing process. These machines are highly complicated, 20-ton, 9-station transferring type presses, performing 9 separate and distinct die operations. They are especially built exclusively for the Employer, and are located on the same floor and adjacent to other machines used in the manufacturing process.

As already noted, the Employer, on December 26, 1944, created this classification of employees by a consolidation of the work formerly done by the operators and set-up men. The change-over affected 24 operators, 21 set-up men and 3 group leaders; of these, the Petitioner then represented the 3 group leaders and the 21 set-up men, who kept the No. 3 presses set-up and in repair, while the SFU represented the 24 operators. All the set-up men and group leaders qualified for the new operate-set-up classification because their work also included the skills required of an operator,<sup>10</sup> whereas all eligible operators were required to complete successfully a special training program in order to qualify, inasmuch as they were unskilled in the work of the set-up men.<sup>11</sup> At the time of the hearing the Employer had 51 operate-set-up men. The additional personnel was obtained from among employees in the units represented by the Petitioner and the SFU, from returning veterans who had formerly been No. 3 press operators, and from outside sources. All were required to complete successfully the Employer's special training program.

<sup>9</sup> The SFU's unit is residual in character, comprising the bulk of the production workers at this plant.

<sup>10</sup> A minimum training period of 6 months was required for set-up men, and approximately 30 months' experience was necessary for them to become thoroughly trained and competent.

<sup>11</sup> Approximately 20 of the 24 operators at that time were women, and inasmuch as women were not eligible for the new classification of operate-set-up man, only 3 or 4 operators became available for the special training program that would qualify them to become operate-set-up men.

The operate-set-up men are paid the guaranteed base rate of \$0.88 to \$1.15½ per hour which the set-up men on the No. 3 presses formerly received, *plus* an incentive bonus. Their earnings now exceed those received by either the set-up men or the operators before the consolidation.<sup>12</sup> They spend approximately 63 percent of their time operating the presses and 37 percent of their time doing set-up and repair work, and are under the supervision of the production foremen who also supervise other production operations in the plant.<sup>13</sup>

There has been no prior Board determination at this plant. Bargaining with respect to these employees has been proceeding on a members-only basis and has been limited to the presentation of grievances. There is also lacking any historical pattern of organization among other employers in the same industry, inasmuch as the No. 3 presses are made exclusively for this Employer. In addition, the record discloses, on the one hand, that the qualifications, training, technical skills and standards of operations requirements for the operate-set-up classification are similar to those possessed by the set-up men at and before the time of the consolidation in December 1944, and are similar in many respects to those of workers in Petitioner's present bargaining unit; that most of the operate-set-up men and their supervisors were formerly set-up men; that their skills are considerably greater than those of workers in the SFU's bargaining unit; and that their earnings are more nearly comparable to those of employees presently represented by the Petitioner. In these respects the interests of the operate-set-up men are indeed closely identified with those of the employees embraced in the Petitioner's existing unit. On the other hand, it is evident that the operate-set-up men are supervised by the same production foremen as are other production employees represented by the SFU; that while their work includes some maintenance and set-up duties, it is primarily that of production; that their working conditions are similar to those of other production workers; and that their integration in the process of manufacture brings them in close relationship to the other production workers.

We are therefore persuaded, on all the facts, that the evidence points to the equal propriety of joining the operate-set-up men either to the Petitioner's established unit, or to the SFU's existing unit.<sup>14</sup> In these circumstances, we shall make no final unit determination at this time, but shall be guided, in part, by the desires of the employees

<sup>12</sup> Operators on the other Baird presses, represented by the SFU, earn a base rate of 71 cents per hour. The hourly rate the set-up men on the No. 3 presses received before the consolidation was and is higher than the base rate for set-up men on other types of Baird presses.

<sup>13</sup> The production foremen do not supervise any set-up men or any other employees presently represented by the Petitioner. These employees are supervised by the foreman of Department 18 (Machine Department), who exercises no supervision over any production workers.

<sup>14</sup> We accordingly find no merit in the SFU's motion to dismiss on the further ground that the unit sought is inappropriate.

involved, as expressed in the election hereinafter directed. If at such election the operate-set-up men select the Petitioner, they will be deemed to have indicated their desire to be included within the Petitioner's established unit, but if they select the SFU, they will be taken to have indicated their desire to be included within the SFU's existing unit.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among all employees classified as operate-set-up men, including group leaders,<sup>15</sup> but excluding supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, subject to the limitations and additions set forth in the Direction.

### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Talon, Inc., Meadville, 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 National Labor Relations Board Rules and Regulations—Series 3, as amended, among the employees in the voting 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 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 International Association of Machinists, Lodge No. 110, or by Slide Fasteners Union No. 20230, affiliated with American Federation of Labor, 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.

<sup>15</sup> At the hearing, the parties stipulated that until the time of the consolidation, the group leaders were always included within the unit represented by the Petitioner, and that they never have been nor are they now supervisors within the Board's customary definition of the term. Inasmuch as they do not have the authority to hire or discharge, or effectively to recommend such action, we shall include them in the voting group established herein.