

IN the Matter of DETROIT SHEET METAL WORKS, PETITIONER *and* SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 292 (AFL) *and* UNITED STEEL WORKERS OF AMERICA, LOCAL 1511 (C. I. O.)

IN the Matter of NEWCOMB DETROIT COMPANY, ET AL., EMPLOYERS *and* SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 292 (AFL), PETITIONER

*Cases Nos. 7-RE-16 and 7-R-2326 through 7-R-2329, respectively.—
Decided April 22, 1947*

Beaumont, Smith & Harris, by Mr. Albert E. Mader, of Detroit, Mich., for the Employers.

George S. Fitzgerald, by Mr. Paul Mayrand, of Detroit, Mich., for the Petitioner.

Mr. Nicholas J. Rothe, of Detroit, Mich., for the Intervenor.

Mr. Jerry Wohlmauth, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

Upon petitions duly filed, hearing in these consolidated cases was held at Detroit, Michigan, on August 28, 1946, before Robert J. Wiener, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

At the hearing, the Intervenor moved to dismiss the petition of the Detroit Sheet Metal Works on the ground that it had forfeited its right to take part in a legal proceeding since it had not filed an annual report with the Michigan Corporation and Securities Commission, as required by a State corporate statute. This motion is denied.¹

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

¹There is evidence in the record that in fact such a report had been filed. Moreover, compliance or noncompliance with the statute referred to is wholly irrelevant, since this proceeding is concerned with the selection of a bargaining representative for the employees of the Employer and not with the legality of the Employer's status under the corporate laws of the State of Michigan.

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

The record reveals that all the Employers involved herein are engaged in the industrial sheet metal business in the State of Michigan, where they fabricate industrial ovens, dust collecting paraphernalia, and similar products. Each of the Employers maintains an erection service for the purpose of installing fabricated equipment on the premises of its customers, some of whom are located out of the State of Michigan. Each Employer imports a substantial amount of its raw materials from points outside the State of Michigan, and a substantial amount of the finished products thus produced is shipped to points outside the State of Michigan.²

The Employers admit and we find that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

The United Steelworkers of America, herein called the Intervenor, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employers refuse to recognize the Petitioner as the exclusive bargaining representative of employees of the Employers until the Petitioner has been certified by the Board in an appropriate unit.

In March 1945, a single contract, individually signed by the Employers, was executed between the Intervenor and the Employers, and made retroactive to June 1, 1944. The contract provided that it was to remain in effect for 2 years from June 1, 1944, and "it shall continue in effect thereafter unless either party gives notice to the contrary as herein provided. Thirty days prior to the expiration of this contract, the parties shall meet in conference at the office of the Company

² The Employers stipulated the following facts concerning their operations in 1945:

The Marshall Blow Pipe Company imported from other States approximately \$100,000 worth of raw material and shipped approximately 10 percent of its total finished products outside Michigan.

The Morton C. Marshall Company imported about \$50,000 worth of raw materials from other States and shipped about 30 percent of its total production to customers outside Michigan.

The Detroit Sheet Metal Works imported raw materials valued at about \$350,000 from other States and shipped outside Michigan approximately 25 percent of its finished products.

The David-Ludwig Company and the Newcomb Detroit Company individually imported about \$500,000 worth of raw materials from outside Michigan and shipped about \$1,000,000 worth of its finished products in interstate commerce.

in (Detroit), unless otherwise mutually agreed, for the purpose of negotiating the terms and conditions of a new contract." Since no notice of termination was given by either party or any meetings held prior to the expiration date, and Petitioner's petition was untimely in reference to the automatic renewal date,³ Intervenor contends that the contract bars this proceeding.

We are of the opinion that under the contract terms set forth *supra*, the instrument was automatically renewed on June 1, 1946, for an indeterminate period of time. Under our interpretation, the contract became one of indefinite duration, and therefore we find, under well-established principles, that it is no bar to an election at this time.⁴

We find that a question affecting commerce has arisen concerning the representation of employees of the Employers, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

Petitioner requests separate plant-wide units composed of all shop and erection employees of each of the five Employers, excluding clerical and office and supervisory employees. Intervenor contends for separate units of shop and erection employees. The Employers generally take no definite position as to the appropriate units.⁵

It appears from the record that both the shop and erection employees perform similar sheet metal operations on industrial equipment. Their work differs only in that the shop employees fabricate the parts of this equipment inside the shop, whereas the erection employees install and put into operation the equipment at the purchaser's location. The job classifications for these employees are the same, and they are listed as erection or shop men on the Employers' pay rolls according to the type of work which they perform the greatest portion of their time. Their rates of pay are the same whether they work in the shop or on erection projects.⁶ There is a substantial amount of interchange between the Employers' shop and erection employees.⁷

As set out, *supra*, the Intervenor has been in contractual relations with the five Employers involved herein since June 1, 1944. Under the terms of this contract, it has represented the Employers' employees in separate units of shop employees only. On the other hand, in pre-

³ While Petitioner's informal claim of representation was sent to the Employers on April 24, 1946, before the automatic renewal date of the contract, it failed to follow this with a petition within the 10 days required by the *General Electric X-Ray* rule (67 N L R B 997).

⁴ *Matter of Flintkote Company*, 63 N L R B. 914 (citing cases)

⁵ The Detroit Sheet Metal Works requests a plant-wide unit, but introduced no evidence as to its appropriateness.

⁶ However, erection workers are sometimes paid the prevailing rate in the locality in which they are working if that rate happens to be higher than their ordinary rate of pay.

⁷ Interchange between the shop and erection employees is not marked at the Detroit Sheet Metal Works.

vious contracts between the Intervenor and the Employers, the bargaining units comprised both shop and erection employees. Thus, the Intervenor has represented these employees in both single and separate units in the course of its bargaining relations with the Employers. It is evident, therefore, that the bargaining history does not conclusively establish the appropriateness of either type of unit, and that the shop and erection employees of the Employers, respectively may function either as separate units or as a single unit for collective bargaining purposes.⁸ Under these circumstances, our determination concerning the scope of the bargaining units will be governed in part, by the desires of the employees themselves to be ascertained by means of separate elections.

Petitioner and the Employers take the position that certain erection employees who have been employed 90 consecutive days or more should be eligible to vote. The Intervenor objects generally to this position. It appears from the record that on out-of-town construction jobs, the Employers hire casual employees when it is determined that the complement of regular workers assigned to the job is insufficient. The casuals are employed at the locale of the construction only for the duration of the specific job, which rarely lasts more than 3 months. Few of these employees move to the next construction project. We have previously considered the status of similar employees⁹ and we are of the opinion that the temporary nature of their employment impels the finding that they are ineligible to vote.

We shall order the conduct of elections among the employees of the respective Employers within the groups listed below :

(1) All shop employees, excluding office and clerical employees, 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 ;

(2) All erection employees, excluding office and clerical employees, 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.

We will make no final determination of the appropriate units pending the results of the elections.

DIRECTION OF ELECTIONS¹⁰

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Detroit Sheet Metal Works,

⁸ *Matter of Struthers Wells Corporation*, 59 N. L. R. B. 454.

⁹ *Matter of Schmieg Industries*, 62 N. L. R. B. 1474.

¹⁰ Any participant in the elections herein directed may, upon its prompt request to, and approved thereof by, the Regional Director, have its name removed from the ballot.

Newcomb Detroit Company, David-Ludwig Company, Marshall Blow Pipe Company, and Norton C. Marshall Company, all of Detroit, Michigan, 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 Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees of the respective Employers in the separate voting groups 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 casual employees and 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 Sheet Metal Workers International Association, Local 292, A. F. L., or by United Steelworkers of America, Local 1511, C. I. O., for the purposes of collective bargaining, or by neither.