

In the Matter of FRASER FURNACE COMPANY, EMPLOYER and STOVE MOUNTERS INTERNATIONAL UNION OF AMERICA, A. F. L., PETITIONER

Case No. 20-R-1732.—Decided February 14, 1947

Mr. Thomas E. Merritt, of Stockton, Calif., for the Employer.

Mr. John D. Roberts, of San Francisco, Calif., for the Petitioner.

Messrs. J. Earl Cook and *Ray Seidner*, both of San Francisco, Calif., for the Intervenor.

Mr. Emil C. Farkas, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

Upon a petition duly filed, hearing in this case was held at Stockton, California, on August 2, 1946, before Charles Y. Latimer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Fraser Furnace Company, a California corporation, is engaged at its plant at Stockton, California, in the business of manufacturing gas heating appliances. During the 6 months preceding the hearing the Employer purchased raw materials valued at about \$250,000, of which approximately 80 percent represented shipments from points outside the State of California. During the same period approximately 60 percent of the finished products manufactured by the Employer was shipped to points outside the State.

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

II. THE ORGANIZATIONS INVOLVED¹

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

Sheet Metal Workers International Association, Local 355, herein called the Intervenor, 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 has refused to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer in the alleged appropriate unit in view of the conflicting claim to certain of the employees therein by the Intervenor, a coaffiliate of the same parent body.

The Employer has had collective bargaining relations with the Petitioner and the Intervenor since 1936 and 1940, respectively. The first collective bargaining agreement was entered into by the Employer and the Petitioner in 1936 and covered virtually the same unit as is now sought by the Petitioner. This bargaining relationship continued until 1940. At that time, a jurisdictional dispute which had been precipitated by the Intervenor's assertion of jurisdiction over all employees of the Employer working on sheet metals of No. 10 U. S. gauge, its equivalent or lighter, was settled by the two unions in a conference held on January 9, 1940, with representatives of the Metal Trades Council at San Francisco. Thereafter, the Employer proceeded to bargain with both the Petitioner and the Intervenor for the employees accorded by the agreement to their particular jurisdictions.

On January 17, 1940, the Employer entered into a collective bargaining contract with the Intervenor, effective February 1, 1940, for an initial period ending December 31, 1940, and containing a 90-day renewal clause. At an undisclosed date in 1940, the Employer also executed a contract with the Petitioner for a period of 1 year and containing a 30-day renewal clause. From that time and continuing to the present, these contracts have been renewed annually.

On April 2, 1946, the Petitioner filed its petition herein, and on the following day notified the Employer, by telegram, that it was instituting this proceeding because "the Sheet Metal Workers Union has

¹ Subsequent to the hearing the International Association of Machinists, herein called the IAM, filed a motion to intervene for the purpose of protecting its interests in the Employer's tool and die makers, maintenance machinists, journeymen machinists, helpers, apprentices, and leadmen or working foremen, which employees were covered by its contract with the Employer of December 18, 1946. However, inasmuch as the parties hereto have agreed to exclude these employees from the unit sought herein, we find it unnecessary to pass upon the motion to intervene.

not lived up to our agreement of 1940.”² Thereafter, on April 4, 1946, the Employer entered into a collective bargaining agreement with the Intervenor covering the same employees as theretofore. This contract was made effective retroactively to January 28, 1946, was for an initial period expiring December 31, 1946, and provided for automatic renewal for annual periods thereafter in the absence of written notice to change given by either party to the other at least 30 days before the anniversary date of any year. This contract is not urged as a bar to this proceeding. Moreover, it is clear that under well-established principles of the Board it cannot bar an election at this time.³

Under the foregoing circumstances and because it appears that effective resolution of the existing jurisdictional dispute between the Petitioner and the Intervenor cannot be had without resort to the Administrative processes of the Act, we shall proceed with the investigation.⁴

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

At the hearing the Petitioner sought a unit of all production and maintenance employees, excluding office and clerical employees and supervisory personnel. The Intervenor, however, contended that a separate unit is appropriate for all employees engaged in the manufacture, fabrication, and assembling of gas furnaces, and working on sheet metal of No. 10 U. S. gauge, its equivalent or lighter. The Employer took no position with respect to the appropriateness of the requested units. Subsequent to the hearing and the motion of the IAM to intervene,⁵ it was stipulated by all the parties that all tool and die makers, maintenance machinists, journeymen machinists, helpers, apprentices, and leadmen or working foremen covered by the contract entered into by the Employer and the International Association of Machinists on December 18, 1946, should be excluded from the unit or units hereinafter found appropriate.

² In this connection it appears that on December 28, 1944, the Intervenor, by letter, informed the San Francisco Labor Council that it was terminating the jurisdictional agreement of January 9, 1940, and that all sheet metal work involving the manufacture, fabrication or assembly of warm air furnaces, evaporated coolers, fans, and blowers would thereafter be done by members of its union.

³ *Matter of Ste Genevieve Lime & Quarry Company*, 70 N L R B 1259; *Matter of Fifth Ave Shoe Corporation*, 69 N L R B 400.

⁴ *Matter of U. S. Industrial Chemicals, Inc*, 71 N L R B 940, *Matter of Midwest Printing Co*, 58 N L R B 673, *Matter of Con P Cowran Printing Company*, 57 N L R B, 185, *Matter of The W H Kistler Stationery Company*, 51 N L R B 978

⁵ See footnote 1, *supra*

The unit issue which has now arisen and with which we are herein concerned, appears, for the most part, to be attributable to the breakdown of the 1940 jurisdictional agreement. As indicated above, the Employer bargained with the Petitioner on a plant-wide basis from 1936 to 1940 and since that time has dealt with both the Petitioner and the Intervenor on the basis of their jurisdictional settlement of 1940. The sheet metal workers, in the unit for which the Intervenor has been the recognized bargaining representative, and whom it now seeks, are well recognized and highly skilled craftsmen. They are required to qualify for their trade by serving a period of apprenticeship, and are not interchangeable with other employees. Indeed, the unit as described herein by the Intervenor appears to conform to the jurisdictional grant of that union from its parent organization.

In view of the foregoing circumstances and upon the entire record in the case, we are persuaded that either a unit of production and maintenance employees as requested by the Petitioner or two separate units as urged by the Intervenor are appropriate. We shall, therefore, make no final unit determination at this time but shall, in part, be guided by the desires of the employees as expressed in the elections directed hereinafter. If at such elections the employees of both voting groups set forth below select the Petitioner, they will be taken to have indicated their desire to constitute a single bargaining unit; otherwise they will be taken to have indicated their desire to constitute separate bargaining units.

Accordingly we shall direct separate elections by secret ballot among the employees of the Employer in each of the following voting groups, excluding office and clerical employees, tool and die makers, maintenance machinists, journeymen machinists, helpers, apprentices, leadmen or working foremen (machinists), 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, subject to the limitations and additions set forth in the Direction:

1. All employees engaged in the manufacture, fabrication, and assembling of gas furnaces and working on sheet metal of No. 10 U. S. gauge, its equivalent, or lighter;
2. All remaining production and maintenance employees.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Fraser Furnace Company, Stockton, California, 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 Twentieth 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 in the 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, (a) to determine whether employees in Group 1, above, desire to be represented by Sheet Metal Workers International Association, Local 355, A. F. L., or by Stove Mounters International Union of America, A. F. L., for the purposes of collective bargaining, or by neither; and (b) to determine whether or not employees in Group 2, above, desire to be represented by Stove Mounters International Union of America, A. F. L., for the purposes of collective bargaining.