AMERICAN CAN COMPANY *and* AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL #17, CIO, PETITIONER *and* UNITED STEELWORKERS OF AMERICA, CIO, AND ITS LOCAL UNION NO. 4689. *Case No. 20–RC–2422. September 10, 1954*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Natalie Allen, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. At the hearing on this petition, the Petitioner sought (1) a unit of lithographic production employees at the Employer's lithographing and enameling plant at Oakland, California, otherwise called Plant 199–A, or, if such a unit be found inappropriate, (2) a unit of all employees at that plant paid on an hourly rate basis. However, in its brief filed after the hearing, the Petitioner changed its position and now seeks at Plant 199–A, as its first choice, the unit of hourly rated employees described above, or, failing that, the unit of lithographic production employees. The Intervenor asserts that neither of the requested units is appropriate, on the ground that the appropriate unit for the employees sought by the Petitioner is a multiplant unit, consisting of employees at some 37 plants of the Employer, including Plant 199–A, which are currently covered by the Steelworkers' master agreement. The Intervenor moves to dismiss the petition on this ground. If the Board should find the proposed multiplant unit inappropriate, the Intervenor contends, in the alternative, that the appropriate unit is the unit of hourly rated employees at Plant 199–A proposed by the Petitioner. The Employer contends that only this last unit is appropriate.

The Employer is a New Jersey corporation with its principal office at New York City. It is engaged in the manufacture of metal and

[1] At the hearing, United Steelworkers of America, CIO, hereinafter called the Steelworkers, and its Local Union No. 4689, hereinafter called Local 4689, which jointly represent employees sought herein by the Petitioner, moved to intervene. The hearing officer properly overruled the Employer's objection to such intervention and granted the motion. *Bethlehem Steel Company, Shipbuilding Division*, 97 NLRB 1072 at 1073.

The Intervenor's motion to dismiss the petition is denied for reasons stated below.

fiber containers, and has some 85 factories, warehouses, and other establishments in 25 States, the Hawaiian Islands, and Canada. At Oakland, the employer operates its Plants 99–A and 199–A, under a single manager. At the former plant, the Employer is engaged in the manufacture of containers. At the latter plant, where operations began about August 1951, it is engaged in the lithographing and enameling of tinplate for about 5 of the Employer's can manufacturing plants in California.[2] The employees sought by the Petitioner work at Plant 199–A.

The Intervenor contends that Plant 199–A has been effectively merged with 36 other plants in the same and other localities so as to form together with such other plants a single multiplant unit, which is alone apppropriate under Section 9 (b) of the Act.[3] We turn, therefore, to a consideration of the factors bearing on the question of whether or not the 37 plants covered by the Steelworkers' contract constitute a single appropriate bargaining unit.

The bargaining history: The Employer and the Steelworkers have had a bargaining relationship since 1937, when they entered into a contract covering employees at a single plant. Thereafter, until 1950, the parties entered into separate contracts covering employees at about 28 plants. On or about March 13, 1950, representatives of the Employer and of the Steelworkers and about 25 of its local unions executed a Basic Agreement. The preamble of this agreement recited that it had been made and entered into by the Employer "on behalf of itself and each of its respective local operating units identified in Appendix A hereto attached" and by the Steelworkers "on behalf of itself and each of its respective local unions" similarly identified. The Basic Agreement covered approximately 26 plants of the Employer and identified the local unions and the local bargaining units at these plants, and stated that the Employer recognized the Steelworkers as the exclusive collective bargaining agent for all employees covered by the agreement. The agreement and subsequent amendments and supplements thereto covered in considerable detail wages, hours, and other working conditions. Among other things, they provided for wages to be paid according to job groups and base rates; for the execution of "Local Agreement";[4] for the incorporation in such local agreements,

[2] These plants are located at Sacramento, Stockton, San Jose, San Francisco, and Oakland (Plant 99–A). Of the total work done at Plant 199–A, only a comparatively small percentage is done for Plant 99–A

[3] Section 9 (b), insofar as here pertinent, provides:

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. . .

[4] The Basic Agreement reads in part:

> Local Agreements shall be executed with respect only to those matters which are specifically designated in this Basic Agreement for incorporation in Local Agreements and within the limits specified in this Basic Agreement.

during the term of the Basic Agreement, of the scale of wage and salary rates established at each plant; for regular pay on 5 specified holidays and on an additional holiday of national, State, or local importance, "as now established at each location," to be specified in local agreements; for the approval by local management and local unions of changes in established starting or stopping times; and for the adjustment of grievances under a four-stage procedure. Although the contract provisions covering this last matter are not entirely clear, it appears that grievances were handled solely at the local plant level until the fourth stage, at which point international representatives of the Steelworkers participated. Grievances not settled at that stage were sent to arbitration. The Basic Agreement as amended and supplemented contained a number of provisions relating to seniority, including a provision for a joint study of seniority practices and problems at all places covered by the Basic Agreement. Pending the negotiation of a comprehensive, uniform seniority plan based on such study, the Basic Agreement provided that local seniority practices would continue in effect.

On November 19, 1951, following a consent election in Case No. 20–RC–1605,[5] the Regional Director certified the Steelworkers (no local) as the exclusive collective-bargaining representative of all employees at Plant 199–A [6] paid on an hourly rate basis. On December 5, 1951, the Employer and the Steelworkers executed a supplement to the 1950 Basic Agreement, adding to the coverage thereof a unit of hourly rated employees at Plant 199–A and identifying Local 4689 as the local union at the plant.[7] On May 21, 1953, the manager of Plant 199–A and representatives of the "Union" executed an agreement. This agreement recited that it had been made by the Employer with respect only to its Plant 199–A and by the Steelworkers on behalf of Local 4689, "hereinafter referred to as the Union." The agreement, which stated that it was in accordance with provisions of the Basic Agreement, provided, *inter alia*, for wage rates and for plant and job seniority, and designated Memorial Day as the sixth paid holiday.

On January 12, 1954, following negotiations at New York and Pittsburgh, representatives of the Employer and the Steelworkers and of about 35 of its local unions, including Local 4689, executed a new contract, which was still in effect at the time of the hearing. This agreement recites that it has been made by the Employer and the Steelworkers, and that it covers employees of the Employer "represented by the United Steelworkers of America at the respective local operating units as identified in Appendix A attached hereto and incorporated by reference herein." Appendix A sets forth approximately 45 local

[5] Not reported in printed volumes of the Board's Decisions and Orders.

[6] As noted above, operations began at this plant about August 1951.

[7] The Basic Agreement indicates that the parties also executed several other supplements relating to other single plants.

bargaining units at some 37 plants,[8] and identifies the local union assigned to each unit. With respect to Plant 199–A, the contract describes the unit as consisting of hourly rated employees and names local 4689 as its local union.[9] Of the Employer's remaining 48 plants, employees at about 36 are represented by labor organizations other than the Steelworkers or its locals in various types of units, and employees at about 12 are not represented for bargaining purposes.

The recognition and grievance clauses of the 1954 contract are similar to those of the 1950 Basic Agreement. The 1954 contract specifies that it supersedes all previous written local agreements executed under provisions of the 1950 Basic Agreement, but provides for the continuation of present local customs and practices and for the execution of future local agreements.[10] It also provides for agreement between local management and local unions as to changes in established starting times; for wages to be paid according to job groups, base rates, and plant locations; and for general seniority rules and the negotiation of local seniority plans. With respect to such plans, the contract states, *inter alia*, that the Employer and the Steelworkers have agreed that negotiations shall be undertaken at each location to review existing local seniority rules and procedures and to bring such provisions into conformity with the agreement; that such negotiations are to be conducted at the local plant level; and that each local seniority plan thus agreed on shall be submitted for review and approval by repre-

[8] Of the 45 units, about 37 were established in Board proceedings. In about 31 of these proceedings, the Board certified the Steelworkers and in the remainder, its locals or districts. Of the 37 plants, 4 are located at Chicago, Illinois; 3 at Maywood, Illinois; 3 at Baltimore, Maryland; 2 at Oakland, California; and 1 at each of the following places: Vancouver, British Columbia; Indianapolis, Indiana; Brooklyn, New York; Newark, New Jersey, Tampa, Florida; Houston, Texas; Cincinnati, Ohio; Milwaukee, Wisconsin; Fairfield, Alabama; Terre Haute, Indiana, Austin, Indiana; Joliet, Illinois; St. Paul, Minnesota; St. Louis, Missouri; Fort Smith, Arkansas, Portland, Oregon; Ogden, Utah; and Sacramento, San Francisco, San Jose, Los Angeles, Pacific Grove, Wilmington, San Diego, and Stockton, all in California.

[9] As noted above, the Employer also operates its Plant 99–A at Oakland. The current contract includes a general unit at this plant and its local union, the Steelworkers' Local No. 4468. The Steelworkers' Local No. 1304 bargains separately for machinists, their helpers, and tool- and die-makers at Plant 99–A. This is the only unit at any of the Employer's plants which is represented by the Steelworkers or by one of its locals that is not included in the current contract.

[10] The contract reads in part:

> 16.2 Presently effective local customs or practices, written or oral, which are not specifically covered by provisions of this agreement and are not in conflict with its provisions shall remain in effect during the term of this agreement.
>
> 16.3 Presently effective local customs or practices written or oral which provide benefits in excess of the specific benefits provided for through the provisions of this agreement shall be continued for the term of this agreement unless eliminated by mutual agreement.
>
> 16.4 Local customs or practices which may hereafter be established by mutual agreement shall, insofar as practicable, be reduced to writing. Any practice or custom hereafter established by mutual agreement or otherwise found to be in violation of the provisions of this agreement shall not be enforceable to the extent that it conflicts with the terms of this agreement unless allowed to continue by mutual agreement between the international union and the general offices of the company.

sentatives of the Steelworkers and the general offices of the Employer.[11] The agreement stipulates that local seniority lists shall be posted on plant bulletin boards and shall be revised at least once every 6 months.

At the hearing on this petition, on February 17, 1954, a representative of the Employer indicated that the contracting parties intended to negotiate another local agreement covering employees at Plant 199–A. However, discussions on the subject had not yet started.

We find in the contracts described above no clear indication as to whether or not the parties to this course of collective bargaining actually intended to effect a consolidation of the local plant units, thereby destroying the separate identity of each one. The basic or master agreements contain features which were present in other cases where the Board found that an appropriate multiplant unit had been established by collective bargaining between an employer and a union representing employees in many of the employer's plants.[12] On the other hand, these same master agreements are also consistent with the preservation of the local plant units as separate and distinct bargaining entities.[13] For all that appears in this case, the Employer and the Steelworkers and its locals adopted the practice of executing "master" or "basic" agreements simply because it was convenient to bargain in one instrument concerning the wages, hours, and other working conditions of employees in all the separate units that were represented, for the time being, by these labor organizations. There is no unequivocal manifestation of an intent to extinguish the right of employees in each of the individual plant units to select and change their bargaining representatives, at appropriate intervals, in plant-wide elections. Under these circumstances, we need not determine whether the intent of the contracting parties as to the scope of the bargaining unit would be controlling if it were clearly expressed. We find that the history of collective bargaining alone is not decisive of the unit issue in this case.[14]

Other tests of appropriateness: Apart from the fact that they have a common employer and a common bargaining representative, the employees in the 37 plants covered by the Steelworkers' current agreement appear to have no special community of interest that sets them apart from all other employees of the Employer in its other 48 plants. Although there was some transfer of personnel from Plant 99–A to Plant 199–A when the latter plant began operations in 1951, there does

[11] If local negotiations do not result in agreement, the issues in dispute are to be referred to these general representatives "in conjunction with the local representatives of the parties."

[12] *West Virginia Pulp & Paper Co.*, 53 NLRB 814; *Bethlehem Fairfield Shipyard, Incorporated*, 58 NLRB 579; *P. Lorillard Company, Louisville Plant*, 58 NLRB 1112; *Standard Brands, Incorporated*, 75 NLRB 394; *Robert Gair Company, Inc.*, 77 NLRB 649.

[13] *Aluminum Company of America and Carolina Aluminum Company*, 61 NLRB 245; *Aluminum Company of America*, 61 NLRB 251.

[14] *Hygrade Food Products Corporation*, 85 NLRB 841.

not appear to be any substantial transfer or interchange of employees among any of the Employer's plants at this time. The current agreement provides for the posting of local seniority lists, and for local variations in wage rates. The 37 plants under this contract do not form any functional, administrative, or geographical segment of the Employer's organization. On the contrary, they are located in about 29 cities or towns in Canada and in 16 States of the United States as widely separated as California, New York, Texas, and Florida. The Board has consistently declined to find appropriate a multiplant unit which does not conform to any functional, administrative, or geographic segment of the employer's operations, where, as here, there is no controlling history of bargaining on the basis of such a unit.[15]

Considering all these factors, we find that the single plant unit sought by the Petitioner is appropriate.[16]

Upon the entire record in this case, we find that the following employees of the Employer at its lithographing and enameling plant at Oakland, California, otherwise known as Plant 199–A, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees paid on an hourly rate basis, excluding all other employees and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

CHAIRMAN FARMER and MEMBER PETERSON, dissenting:

We disagree with the conclusion of our colleagues that a single plant unit is appropriate in this case. They base their opinion upon the Board's decision in the *Hygrade* case [17] wherein the principle was enunciated for the first time that there must be an unmistakable indication that parties to a master contract mutually intended to extinguish the right of employees to be represented in separate plant units before the Board would determine that a multiplant unit had been established. This appeared to constitute a significant departure from the past Board practice of ascertaining the intent of parties in cases of this type by looking to the terms of the agreement and their conduct with respect thereto. Thus the shape of the bargaining unit will be fashioned on the basis of a purely artificial test. Moreover, a review of subsequent decisions discloses that this change which *Hygrade* appeared to make has been more illusory than real. Thus,

[15] *Hygrade Food Products Corp., supra; Vita Food Products, Inc.*, 103 NLRB 495, 497; *Frost Lumber Industries*, 101 NLRB 659, 661; *Gulf Oil Corp.*, 100 NLRB 1007, 1009; *Armour & Company*, 101 NLRB 1072, 1078.

[16] As noted above, this is the alternative unit proposed by the Intervenor and the only unit proposed by the Employer.

Because we grant the Petitioner's primary unit request, we find it unnecessary to consider its alternative request for a lithographic unit.

[17] *Hygrade Food Products Corporation*, footnote 14, *supra*.

except in isolated instances,[18] the Board has not adhered to the *Hygrade* rule with respect to ascertaining the intent of parties to master agreements. On the contrary, the Board has continued to hold that a multiplant unit has been established where the parties have had a substantial bargaining history based upon a series of master contracts covering specifically named plants and where the terms of the agreement and the conduct of the parties with respect thereto has been consistent with a conclusion that they intended to create such a unit.[19]

Considering the instant case in light of these criteria, it is our opinion that the labor relations history from 1944 to 1954 clearly reflects an intention by the parties to bargain on a multiplant basis,[20] as manifested by: (1) The master or basic agreements which contain extensive provisions covering all the substantive terms usual to collective-bargaining agreements:[21] (2) the provision in the basic agreement that the local supplements shall be executed only with respect to those matters which are specifically designated in the basic agreement for incorporation in local supplements and within the limits specified in the basic agreement;[22] (3) the joint participation by an International representative of the Steelworkers and a local union representative from each of the plants in which the Steelworkers had bargaining rights in the negotiation and execution of the 1950 Basic Agreement and the 1954 master contract entered into with officials of the Employer;[23] (4) the provision in the 1950 Basic Agreement for a joint study by a seniority plan committee consisting of equal representation by members appointed by the Steelworkers and the general management of the Employer for the purpose of negotiating a comprehensive, uniform seniority plan; (5) the provision in the 1954 master contract that any local practice or custom found to be violative of the provisions of that agreement would be unenforceable to the extent that it conflicted with the terms of the master contract, unless allowed to continue by mutual consent of the Steelworkers international and the

[18] *Armour & Company,* 101 NLRB 1072.

[19] *The Goodyear Tire and Rubber Company,* 105 NLRB 674; *The Firestone Tire and Rubber Company,* 103 NLRB 1749; *International Paper Company, Southern Kraft Division,* 101 NLRB 759; *Underwood Corporation,* 101 NLRB 25; *Kaiser Aluminum & Chemical Corporation,* 100 NLRB 107; *Underwood Corporation (Pacific District),* 99 NLRB 416; *St. Regis Paper Company,* 97 NLRB 1051; *International Paper Company, Tonawanda Mill,* 97 NLRB 764; *Pioneer Mercantile Company,* 95 NLRB 274.

[20] We note that the Employer and the Steelworkers entered into a master contract for all the Employer's California plants in 1944; that this contract was renewed in 1947; that the Basic Agreement covering some 26 plants, including all those in California, was executed in 1950, that the plant involved herein was included in the coverage of the Basic Agreement by a supplementary agreement in 1951; and, that another master contract covering some 37 plants, including the one with which we are here concerned, was executed in 1954.

[21] *Lever Brothers Company,* 97 NLRB 1240, 1242.

[22] *The Goodyear Tire and Rubber Company,* 105 NLRB 674; *The Firestone Tire & Rubber Company,* 103 NLRB 1749, 1750; *Hazel-Atlas Glass Company,* 59 NLRB 706, 708.

[23] *International Paper Company, Tonawanda Mill,* 97 NLRB 764, 766; *St Regis Paper Company,* 97 NLRB 1051; *The Firestone Tire & Rubber Company,* footnote 21, *supra.*

general "offices" of the Employer; and, (6) the relegation to the Employer and the Steelworkers international of the right to effectuate changes in the basic or master agreements.[24]

If the majority decision herein presages, as we think it does, a reversion to the *Hygrade* principle, we regard it as unfortunate, as it is tantamount to making parties specifically state in their agreement, or otherwise affirmatively express the fact, that they are bargaining on a multiplant basis. While requiring a more explicit statement by the parties in their contract as to the type of unit they are creating would greatly facilitate Board determination as to their intent, we believe that it would have the concomitant effect of making the presence or absence of such a statement a *sine qua non* for finding the existence of a multiplant unit in derogation of the other equally—if not more important criteria previously given considerable weight by the Board.

In view of the foregoing, and consistent with well-established Board precedent, we would find that where, as here, there has been a substantial bargaining history on a multiplant basis, a unit limited to employees of one plant is not appropriate for purposes of collective bargaining.[25] Accordingly, we would dismiss the petition herein.

[24] *The Goodyear Tire and Rubber Company*, footnote 22, *supra*.

[25] *Owens-Illinois Glass Company*, 108 NLRB 947; *Buckeye Oil Company, Chemical Pulp Division*, 101 NLRB 30, 31; *Hanovia Chemical and Manufacturing Company*, 90 NLRB 650, 651 and cases cited therein.

RAYTHEON MANUFACTURING COMPANY *and* INDEPENDENT UNION OF PLANT PROTECTION EMPLOYEES IN THE ELECTRICAL & MACHINE INDUSTRY, PETITIONER. *Case No. 1–RC–3587. September 10, 1954*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before George A. Sweeney, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks to represent as a separate appropriate unit all guards within the Employer's receiving tube division at its plants