

In the Matter of HAMMOND & IRVING, INC. and INTERNATIONAL
ASSOCIATION OF MACHINISTS

Case No. 3-R-1075.—Decided January 31, 1946

Nobel, Leary & Leary, by *Mr. Perry E. Leary*, of Auburn, N. Y., for the Company.

Mr. H. I. Smith, of Buffalo, N. Y., and *Mr. Claude Fairfield*, of Seneca Falls, N. Y., for the IAM.

Miss Ruth E. Bliefeld, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, herein called the IAM, alleging that a question affecting commerce had arisen concerning the representation of employees of Hammond & Irving, Inc., Auburn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing, upon due notice before Eugene von Wellsheim, Trial Examiner. The hearing was held at Auburn, New York, on October 3, 1945. The Company and the Union 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

Hammond & Irving, Inc., a New York corporation, is engaged at its plant at Auburn, New York, in the manufacture of steel forgings. During the period from January 1, 1945, to June 30, 1945, the Company used raw materials valued in excess of \$200,000, more than 80 percent of which was obtained from points outside the State of New

York. During the same period, the Company manufactured finished products valued in excess of \$200,000, more than 40 percent of which represented shipments to points outside the State.

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

II. THE ORGANIZATION INVOLVED

International Association of Machinists is a labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the IAM as the exclusive bargaining representative of certain of its employees until the IAM has been certified by the Board in an appropriate unit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the IAM represents a substantial number of employees in the unit it alleges to be appropriate.¹

We find that a question affecting commerce has 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 UNIT

The IAM seeks a unit of all employees in the Company's machine and saw shop, including crane operators, millwrights, maintenance machinists, machine operators, lay-out men, and saw tenders, but excluding all administrative, clerical, engineering, and supervisory employees. The Company, on the other hand, contends that the unit sought is inappropriate and that, in view of previous bargaining history, the only proper grouping is one which includes all production and maintenance employees, excluding office and clerical and supervisory employees.

In 1942, pursuant to the results of a consent election, the Company entered into a collective bargaining contract with the Metal Trades Department of the American Federation of Labor, herein called the Metal Trades, covering a unit of all production and maintenance employees of the Company. It seems that the contract provided that the Metal Trades represented "individually and collectively the craft organizations of the Company who come under the jurisdiction of the craft organizations or Unions so enumerated, to wit: International Association of Machinists, Lodge No. 153, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Local No. 628"; the latter organization is herein called the Blacksmiths.

¹ The Field Examiner reported that the IAM submitted 15 authorization cards, and that there are approximately 25 employees in the unit it seeks.

In June 1945, after the expiration of the 1944 contract, a representative of the IAM communicated with the Company and presented a proposed new contract in which the bargaining agent was set forth, as in the previous contracts, as the Metal Trades. The Company refused to accept the contract, apparently because it had been informed that the Blacksmiths was not interested in negotiating a new agreement. At subsequent meetings the Blacksmiths indicated its lack of interest in a new contract, and stated it had no objection to the unit proposed herein. The IAM is not permitted, according to its constitution, to admit the employees in the forge shop into its organization, except under unusual circumstances. Neither it, nor any other organization, is presently attempting to organize these employees, and the unit sought apparently consists of all employees of the Company under the jurisdiction of the IAM.

The Company's production operations are carried on for the most part in two separate buildings, the forge or main shop, and the machine and saw shop; these buildings are located in close proximity to each other. An outdoor crane which services both buildings is located between them. This crane is attached to the rear of the machine shop building.

The Company's supervisory hierarchy consists of a superintendent over all production, a foreman over both buildings on the day shift, and a foreman in charge of the night shift. There is an occasional temporary interchange of employees between the two buildings. Employees in both buildings are paid on an hourly basis. They also work the same shifts, and use a common locker and shower room. There are two time clocks and racks located at the entrance to the forge shop which are used by the employees of both shops. But it appears that, the employees of the machine and saw shop use one clock and rack, and the employees of the forge shop the other.

In the forge shop hammer work is done, which consists of heating the steel in the heating furnaces, and hammering it into shape according to customer specification. In the saw shop pieces that are to be forged are cut from steel billets, and, after forging, twin forgings are cut of varying sizes and dimensions. The machine shop rough machines forge pieces when requested by a customer.

It appears that the work performed and the skills required in the machine and saw shop are distinctly different from the work performed and the skills required in the forge shop. The contracts between the Company and the Metal Trades took cognizance of the separate identity of the employees in the machine and saw shop. In addition to stating that the Metal Trades represented the IAM and the Blacksmiths, the contract provided for separate committees from the machine and saw shop, and the forge shop. Also, the Blacksmiths have withdrawn from the collective bargaining picture. On the basis

of all the facts we perceive no valid reason for denying employees in the machine and saw shop the right, if they so desire, to be separately represented by their own collective bargaining representative.

We find, therefore, that all employees in the machine and saw shop of the Company's Auburn, New York, plant, including crane operators, millwrights, maintenance machinists, machine operators, lay-outmen and saw tenders, but excluding laborers and administrative, clerical, and engineering 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

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 Hammond & Irving, Inc., Auburn, New York, 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 Third 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 the employees in the unit found appropriate in Section IV, above, who were employed during the payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 any 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, for the purposes of collective bargaining.