

the contract in question, I would be inclined to go along with the majority, but here, as in all cases involving contract bar, the Board must balance the right of employees to select a bargaining representative against the desirability of maintaining stability in labor relations. The petition for decertification in this case is supported by the great majority of the employees in the unit. The right of these employees to an election is, I believe, far too important and fundamental to be denied on the mere basis of the apparent authority of the Union's representatives to sign the contract. Moreover, the Board cannot stop short of obtaining all the facts necessary to arrive at a fair decision in contract-bar cases on the ground that to do so would be to inject itself into the internal operations of a union, particularly where, as here, that would involve no more than the interpretation and application of the Union's constitution. There is, certainly, nothing so privileged or so confidential about a union's constitution that the Board ought not to interpret and apply it, where such action is necessary to promote and to protect the rights of employees under the Act.

It is likewise true that a contract can scarcely be said to achieve such stability in labor relations that it should operate as a bar where, as here, the contract was executed by the Employer and the Union with knowledge that it had been disapproved by the members of the Union as was their right under the Union's constitution.<sup>5</sup>

Accordingly, for the reasons stated above, I would find that the 1954 contract is not a bar.

MEMBER LEEDOM took no part in the consideration of the above Decision and Order.

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<sup>5</sup> See my dissent in *Midland Rubber Corporation*, 108 NLRB 930.

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**Owens-Illinois Glass Company, Petitioner and American Flint Glass Workers' Union of North America, and its Local 700, AFL and Glass Bottle Blowers' Association of the United States and Canada, AFL, and its Local 59.<sup>1</sup> Case No. 8-RM-114. April 15, 1955**

#### 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 Edward A. Grupp, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The Unions are herein called Flints and GBBA, respectively

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Murdock, Peterson, and Rodgers].

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

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

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

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

The Employer seeks a determination of the bargaining representative of the hourly paid employees in the forming department of its Toledo, Ohio, plant. Flints and GBBA, each of which represents one half of the forming department of 240 employees, request the Board to dismiss the petition on the ground that no question concerning representation exists within the meaning of Section 9 (c) (1) (B) of the Act as neither union has demanded recognition as bargaining representative of all forming department employees, and neither claims to represent a majority of the employees in the unit which the Employer asserts is appropriate. In addition, each maintains that the employees which it represents perform operations requiring different skills from those of the other union and that, therefore, a unit comprising all forming department employees is inappropriate. The Employer asserts that the unit set forth in the petition is appropriate on either a craft or departmental basis, that the contractual units presently represented by Flints and GBBA are inappropriate, and that a question concerning representation exists by virtue of the demands of the unions for contract renewal in the portions of the forming department which they represent, which, when considered together, amount to a demand to represent all the employees in the department.

The Employer manufactures glass products at plants located throughout the United States. At its Toledo, Ohio, plant, the only one involved in this proceeding, its products are, among other things, glass tumblers and stemware. These are manufactured by the use of automatic glassmaking machines which transform molten glass into a finished product. All automatic machines are located in a separate plant area called the forming department. In 1935, when the Employer produced only tumblers in the forming department, it recognized GBBA as representative of all the department's employees. In 1938, however, it commenced to manufacture stemware in addition to tumblers. At that time, Flints demanded and received recognition as representative of those employees who produced stem-

ware. Collective bargaining was conducted with GBBA and Flints each representing a segment of employees in the forming department until 1946. In that year, the Employer, Flints, and GBBA executed a "temporary" agreement whereby each union assumed jurisdiction over one-half of the machines and employees in the forming department. An imaginary line was thereupon drawn through the department separating those employees represented by Flints from those of GBBA. Bargaining has continued on this basis since that time, the most recent contracts having been executed in September 1953 effective for 1 year. The contracts commence and end on the same date. Throughout the years GBBA has bargained with the Employer on an individual basis while Flints has bargained on an associationwide basis.<sup>2</sup> Both GBBA and Flints are seeking new contracts. Neither contends that the recently expired contracts constitute a bar to the instant petition.

Evidence was introduced by the Employer designed to show that the Flints claimed to represent all of the forming department employees prior to the 1946 agreement, and continued to press its demand until the date of the hearing. It introduced letters from Flints one of which, dated December 2, 1952, states in part as follows:

I wish to state that the question involved in the subject matter presented in your letter dates back to 1935, when in a spirit of cooperation, the American Flint Glass Workers' Union of North America temporarily agreed to permit the Automatic Machine Operators at the Libbey Glass Factory to be taken over by the Glass Bottle Blowers' Association of the United States and Canada in accordance with the request of the Libbey Glass Company and an agreement between the late Mr. T. Rowe, President James Maloney and President M. J. Gillooley. That was done by President Gillooley in the very best of faith.

However, when the general situation changed and the American Flint Glass Workers' Union of North America renewed its activities toward extending its organization to embrace all workers performing miscellaneous operations, including Automatic Machine Operators in the industry, over which it exercises very definite jurisdiction, as provided for by its charter, issued by the American Federation of Labor, its efforts to regain the Automatic Machine Operators at the Libbey plant were obstructed by the Glass Bottle Blowers Association of the United States and Canada.

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<sup>2</sup> Flints has bargained with the National Association of Manufacturers of Pressed and Blown Glassware for the forming department employees represented by it. Its contract is entitled rules and wages for miscellaneous division machine plants, and is signed by a vice president of the International for the Union and by the secretary of the Association for the Association.

There is a long record of that which followed, including the meeting held in the Commodore Perry Hotel, Toledo, Ohio, on November 7, 1946. Since that meeting, *repeated attempts have been made to have the Glass Bottle Blowers and the Libbey Glass Company management concede these Automatic Machine Operators to the American Flints Glass Workers' Union of North America, as was agreed to and very definitely understood when the original agreement was made back in 1935 and which we have heretofore referred to.*

Certainly the officers of the American Flint Glass Workers' Union of North America have been very reasonable and *consistent in their endeavors to regain to our membership these Automatic Machine Operators during these several years.* [Emphasis supplied.]

On January 22, 1953, Flints again wrote to the Employer as follows:

We again call attention to the fact that, in view of all of the circumstances from the beginning of the question, members of the American Flint Glass Workers' Union of North America *should be recognized and employed in all operations connected with the production and processing of ware from Automatic Machines.* We assumed a most liberal attitude in the meeting of November 7, 1946, by which the issue, up to that time was, at least temporarily, taken care of, and, *in consideration of that, it seems to us that the Glass Bottle Blowers Association of the United States and Canada should, not only be agreeable to conceding the operation of this new unit in question, but should concede to the American Flint Glass Workers' Union all production units on the furnace with which they are connected.* [Emphasis supplied.]

We have held that a union may withdraw its claim to representation once made by its subsequent conduct, by statements made at the hearing, or even after the Board has issued its decision and direction of election<sup>3</sup> but that such disclaimer, if it is to be recognized, must be clear and unequivocal and not inconsistent with its acts.<sup>4</sup> Thus, while the unions involved herein state that they desire to continue to act only as representative of the segment of employees whom they presently represent and not of employees of the entire forming department, at least Flints has maintained a continuing interest in representing all the employees in the forming department. Such interest is shown, not only by the correspondence of Flints, referred to above, but also by the continued representation demands made by both Flints and

<sup>3</sup> *Coca-Cola Bottling Company of Walla Walla, Washington*, 80 NLRB 1063.

<sup>4</sup> *McAllister Transfer, Inc.*, 105 NLRB 751, *The Johnson Bros Furniture Co.*, 97 NLRB 246.

GBBA throughout the years whenever the Employer has attempted changes in forming department operations.

It is, therefore, clear that Flints at least (if not GBBA also) by its conduct has sought to represent all the employees in the forming department, and, while acquiescing in the 1946 "temporary" agreement, has nevertheless continued to press its demands to represent all the employees in the unit which the Employer asserts is appropriate.

Accordingly, we find that Flints has requested recognition as representative of employees in a unit substantially in conformity with that set forth in the petition and that a question concerning representation exists within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.<sup>5</sup>

4. The appropriate unit:

The Employer seeks a unit consisting of all hourly paid forming department employees as described below. Flints and GBBA assert that the unit is inappropriate. They point to a history of bargaining on a separate basis for approximately 20 years and contend that the Board should not disturb such a long period of uninterrupted bargaining. They also assert that the employees represented by each of them possess distinct and dissimilar craft skills, thereby further militating against the appropriateness of a single departmental unit. As previously stated, the Employer contends that the unit sought by it is appropriate on either a craft or departmental basis.

Since 1935, the Employer has maintained a forming department in a separate area of the Toledo plant. From its original tumbler-producing operation it has expanded into a tumbler and stemware operation. At the present time the Employer operates 17 production lines utilizing 240 employees in various categories. It appears that in 1946, pursuant to the "temporary" agreement, the forming department operations and employees were arbitrarily divided among the Flints and GBBA, with each union thereafter, and at the present time, exercising jurisdiction over half of the forming department employees separated by an imaginary line.

The forming department is physically separated from the production and maintenance departments, is separately supervised, and its employees are not interchanged with employees of the other departments. On the GBBA side of the arbitrary line of jurisdictional demarcation, there are 12 head operators, 32 machine operators, 49 burn-off feeders, and 8 take-out boys;<sup>6</sup> Flints represents 12 head operators, 36 machine operators, and 72 transfer boys. The head operators and machine operators are highly skilled journeymen. Regardless of the

<sup>5</sup> See *Andrews Industries, Inc.*, 105 NLRB 946.

<sup>6</sup> At the time of the hearing, 19 employees in the latter two classifications were on furlough.

union by which they are represented or whether they produce tumblers or stemware, the operators possess the same basic skills, operate the same or similar machines, and perform comparable duties. Burn-off feeders and take-out boys in the GBBA sector perform duties similar to transfer boys in the Flints area in feeding ware into machines and transferring it between machines. It is from these classifications that employees are selected to undergo apprenticeship training to become operators. It would thus appear that, bargaining history aside, a single unit of forming department employees rather than two separate groupings of employees in the department would alone be appropriate, for together these employees constitute a functionally distinct and homogeneous group with interests separate and apart from those of other employees.<sup>7</sup>

Although bargaining history is a factor which will be considered in determining the appropriateness of a unit, it is not a conclusive factor. We do not believe in view of the facts herein that the history of bargaining justifies the recognition of two separate units within the forming department. They find no warrant in any of the customary factors relevant to determining appropriate units. They were constituted only as a device to attempt an accommodation of the conflicting jurisdictional claims of the two unions.<sup>8</sup>

Likewise, we do not believe the history of bargaining between the Employer and Flints on an associationwide basis covering members of Flints in the forming department is a controlling factor. We have held that notwithstanding what an employer's previous bargaining history may have been, he may withdraw from a multiemployer unit by evincing his intent to pursue an individual course.<sup>9</sup> Such intent has been shown in this matter by the filing of the petition and the absence of any claim, that an associationwide unit should be determined appropriate.

Accordingly, on the basis of the record herein, we find that the following unit is appropriate for the purposes of collective bargaining:

All hourly paid employees in the forming department of the Employer's Toledo, Ohio, plant, including head operators, machine operators, apprentices, burnoff feeders, take-out boys, and transfer boys, but excluding all other employees and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting in part:

I do not agree with the majority decision to the extent that it would merge the employees in the two historical units comprising the form-

<sup>7</sup> Cf. *Mock, Judson, Voehringer Company of North Carolina, Inc.*, 110 NLRB 437.

<sup>8</sup> See *Anheuser-Busch, Inc.*, 102 NLRB 800

<sup>9</sup> *York Transfer & Storage Co.*, 107 NLRB 139

ing department into a single, overall unit, without affording the employees in each group an opportunity to register their desires in the matter. I believe that this decision represents an unwarranted departure from existing, well-established Board policy.

Since 1935, GBBA has represented the employees in the forming department engaged in the production of tumblers. Since 1938, when the Employer began the manufacture of stemware in its forming department, Flint has served as the bargaining representative of the employees engaged in that operation.<sup>10</sup> At least since 1946, the unions have represented their respective groups under written contracts. The employees represented by the unions constitute well-defined skilled groups, between which there is no interchange. Each group has its own apprenticeship program.

In the face of the above facts, and notwithstanding the readiness of GBBA and Flint to continue to represent separately the historical units, the majority herein holds that a single unit of forming department employees is alone appropriate. As already indicated, I am unable to reconcile this holding with the Board's long-standing policy in cases such as this which precludes the inclusion of a group of employees, who have previously enjoyed separate representation, into a broader unit, without first ascertaining their desires on the question.<sup>11</sup> It would appear that my colleagues' failure to adhere to this policy in the instant case, or even to expressly acknowledge its existence, stems from a belief on their part that neither of the historical units was endowed with any of the characteristics of an appropriate unit under Board principles at the time of its creation or has since acquired such characteristics. But, as the Board again had occasion to point out recently,<sup>12</sup> voting groups have for a long time been accorded the privilege of self-expression merely because they had engaged in and wished to continue collective bargaining, albeit on the basis of an inappropriate unit.<sup>13</sup>

<sup>10</sup> The so-called "arbitrary" or "imaginary" line drawn in 1946 served only to confirm the unions' existing representative status in the tumbler and stemware production groups. It is significant that in about 1948, when a stemware production machine was installed on the GBBA side of the line, Flint was recognized by the Employer as the exclusive representative of the employees assigned to that machine.

<sup>11</sup> *Long Electric Sign Co., et al.*, 109 NLRB 770 *Pennsylvania Electric Company*, 110 NLRB 1078

<sup>12</sup> *The Zia Company*, 108 NLRB 1134, as modified in 109 NLRB 312 and 862.

<sup>13</sup> See for example, *Western Electric Co., Inc.*, 98 NLRB 1018, which is discussed in footnote 8 of the *Zia* decision, and the following cases: *Long Electric Sign Co., et al.*, *supra*, where the Board refused to include painters (who were not found to be craftsmen) in a production and maintenance unit without a self-determination election; *New Jersey Brewers Association*, 92 NLRB 1404, where the Board refused to merge firemen and oilers with engineers to form a powerhouse unit, without first affording the firemen and oilers an opportunity to express their desires; *J. R. Reeves & A. Teichert & Sons, Inc.*, 89 NLRB 54, where the Board refused to expand a unit of mechanics to include other mechanics, whose duties did not appear to be notably different, without a self-determination election; and *Illinois Cities Water Company*, 87 NLRB 109, where the Board held that certain physical employees could not be merged with laborers, without a self-determination election. The self-determination elections directed in all these cases were deemed necessary merely because

Under all the circumstances, I am persuaded that Board policy dictates that the employees in the historical contract units should not be merged into a single bargaining unit without first determining their desires in the matter. I would, therefore, conduct such self-determination elections among those employees.

the employees concerned had a separate history of bargaining. And, in view of the controlling weight which my colleagues attached to their finding that the existing units in this case "were constituted only as a device to attempt an accommodation of the conflicting jurisdictional claims of the two unions," it is particularly noteworthy that the decision in the *Illinois Cities Water Company* case affirmatively indicates that conflicting jurisdictional claims of the two unions involved therein brought about the creation of the separate bargaining groups of laborers and other physical employees.

**Plastic Molding Corporation and J. G. Cavanaugh, Petitioner and Local 412, United Rubber, Cork, Linoleum & Plastic Workers of America, CIO. Case No. 2-RD-261. April 15, 1955**

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 Meyer G. Reines, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Union contends that the petition herein should be dismissed because the Petitioner is a supervisor and also because he was assisted by a supervisor in filing the petition. We find no merit in the contention. As hereinafter found under paragraph numbered 4, Petitioner Cavanaugh is not a supervisor. As to the alleged assistance from Supervisor Berls, the record only shows that the Petitioner "discussed it [the petition] with him" and asked him where to get the petition. In these circumstances, we do not believe that the Petitioner, in filing this petition, acted at the behest of the Employer's supervisor.<sup>1</sup> Accordingly, we deny the Union's motion to dismiss the petition in this proceeding.

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 Petitioner, an employee of the Employer, asserts that the Union, currently recognized by the Employer as the exclusive bargaining representative of the production and maintenance employees of the Employer, is no longer the exclusive bargaining representative as defined in Section 9 (a) of the Act.

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

<sup>1</sup> *Moore Drop Forging Company*, 108 NLRB 32.

112 NLRB No. 35.