

advantage from joining a union; and by interrogating one of its employees concerning his personal note-taking on subjects of a nonconfidential nature the Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act.

4. By discriminating with respect to the hire and tenure of employment of Leonard Fields and William F. Bell, the Respondent has violated Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

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**Mueller Industries, Inc. and Midwestern Foundries, Inc.,<sup>1</sup> Petitioner and Local No. 6, International Molders and Foundry Workers Union of North America, AFL-CIO.<sup>2</sup> Case No. 13-EM-563. July 26, 1961**

**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 William D. Boetticher, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 [Chairman McCulloch and Members Leedom and Brown].

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

1. Mueller Industries, Inc., herein referred to as Mueller, operates two foundries, one in Bluffton, Indiana, and the other in Milwaukee, a machine shop in Aurora, Illinois, and a pattern shop, Central Pattern Shop Division, herein referred to as Central, in South Milwaukee. Midwestern Foundries, Inc., herein referred to as Midwestern, is an affiliate of Mueller, and operates two foundries, one in Garrett, Indiana, and the other in South Milwaukee, on the same premises as Central. The foundry in South Milwaukee is operated under the name of Badger Malleable & Manufacturing Company, herein referred to as Badger. Mueller and Midwestern are both Indiana corporations, and the principal stockholder of both is Arthur E. A. Mueller. They also have the same president and the same director of industrial relations, who determines labor relations policy for both. In view of the common principal stockholder, control, and labor relations policy, we find that Mueller and Midwestern constitute a single employer.<sup>3</sup> We find that the Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The name of the Employer has been amended in accord with the evidence.

<sup>2</sup> The name of the Union appears as corrected at the hearing

<sup>3</sup> See *Field Paper Box Co.*, 130 NLRB 22

3. Each of the above-mentioned divisions of Mueller and Midwestern, with the exception of Central, which began operations in 1960, has separate collective-bargaining relationships. The Employer seeks by its petition to establish a separate unit of patternmakers at Central or, in the alternative, to permit these employees, by a self-determination election, to choose whether to become part of the existing unit of Badger's production and maintenance employees, which is represented by the Union. The Union argues that the petition should be dismissed on the grounds that the employees sought are already within the Badger unit, that its current contract with Badger is a bar, and that no question concerning representation has been properly raised in this case. For the reasons set forth below, the Union's motion to dismiss is hereby denied.

The Badger foundry became a division of Midwestern in 1957.<sup>4</sup> The Union represented employees at the Badger foundry long before this change took place. The only election among these employees was conducted in 1946 by the Wisconsin State Board in a stipulated unit of maintenance and production employees, including patternmakers and pattern repairmen. Thereafter, Badger executed a series of union-security agreements with the Union which included the job classifications of "Pattern—Metal" and "Pattern repairman." However, subsequent to August 1951, Badger actually had no patternmakers, and all its patternmaking and major pattern repair work were contracted out. Badger continued to have a pattern repair area where minor repairs were performed by supervisors, pattern repairmen, or carpenters. In 1957, with the change in ownership, Midwestern assumed the contract between Badger and the Union. The first contract negotiated by Badger, as a division of Midwestern, was executed on February 22, 1958, and continued to carry the classifications of "Patternmaker—Metal" and "Pattern repairman," but the most recent contract between the parties, executed on June 10, 1959, no longer contains these classifications.

In the fall of 1959, Mueller began planning the establishment of a shop to handle patternmaking for the four Mueller-Midwestern foundries, and to do patternmaking for outside foundries and related industries. Patternmaking equipment was purchased, and, on March 15, 1960, Mueller established Central on the premises formerly occupied by the Badger pattern repair operation. A manager was hired, who secured employees by contracting journeymen patternmakers and apprentices whom he knew personally, and through newspaper advertisements. Badger employees were not solicited and none were hired.

<sup>4</sup> On April 23, 1957, the principal stockholder of Mueller and Midwestern purchased Badger, and, on May 21, 1957, he assigned his rights in Badger to Midwestern. Thereafter, Badger became a division of Midwestern.

After the Central employees had been on the job for about a month, union representatives advised the Central manager that his employees were required to join the Union by virtue of the Badger contract. The Central manager refused so as to instruct his employees on the ground that they did not work for Badger, but were employees of Mueller. Thereafter, the Union filed a series of grievances claiming that the Employer was violating the union-security provisions of the Badger contract, but the Employer maintained that the Central employees were not covered by this contract. The Union thereupon initiated arbitration proceedings, which are pending.

On the basis of the foregoing, particularly the fact that there has been no patternmaking operation at Badger since August 1951, we find that the Central pattern shop is a new operation, and not an accretion to the Badger foundry. We, therefore, find that the collective-bargaining contract between the Employer and the Union, executed prior to the establishment of Central in 1960, does not cover the Central employees and is not a bar.<sup>5</sup> Moreover, the petition, which was filed on March 1, 1961, was timely with respect to this contract, which was effective from May 22, 1959, to May 22, 1961.<sup>6</sup>

The Union contends, however, that no question concerning representation is raised by the Employer's petition herein on the ground that it made no demand upon Central, but claimed to represent these employees as part of the existing Badger unit which it represented. As the Union did notify the Central manager that it represented these employees, and as Central and Badger are divisions of a single employer, we find the Union's demand adequate to raise a question concerning representation. Moreover, the Union's claim to represent these employees as part of the existing unit, in view of our finding below that these employees may be added to that unit, raises a question concerning representation. Accordingly, we find that 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.<sup>7</sup>

4. The only employees at Central are four journeymen patternmakers and one apprentice patternmaker who is being trained under the State apprenticeship program. Central does all the patternmaking for the Midwestern-Mueller foundries, all the pattern repair for Badger, and some pattern repair for the other divisions of the Employer. The Employer plans to expand the Central operation so that it will eventually do pattern work for outside firms.

The Central area is separated from the Badger area by a wire cyclone fence and a sign designating the area as the Central Pattern Shop

<sup>5</sup> See *Buy Low Supermarket, Inc.*, 131 NLRB 23; *Houck Transport Company*, 130 NLRB 270; *Libby, McNeill & Libby*, 130 NLRB 267.

<sup>6</sup> See *Deluxe Metal Furniture Company*, 121 NLRB 995

<sup>7</sup> See *Pennsalt Chemicals Corporation*, 119 NLRB 128, 129.

Division of Mueller. There is no interchange of employees between Central and Badger, but the Central patternmakers occasionally use the foundry premises, and the foundry employees go into the Central shop for their pattern-repair work. The Central employees have different wage rates, overtime, and holiday benefits than those of the Badger employees. Moreover, they do not punch timeclocks as do the Badger employees. Although the Mueller-Midwestern president is ultimately responsible for both operations, the Central employees are directly supervised by their own manager, while the Badger employees are supervised by the foundry superintendent and the foundry management. Separate payroll and tax records are kept for each division by the Badger bookkeeper, whose time on Central work is charged to that firm.

On the basis of the entire record, we are of the opinion that either a separate unit of Central patternmakers and helpers or a unit consisting of the employees currently represented by the Union at the Badger foundry together with these Central patternmakers and helpers may constitute a unit appropriate for the purposes of collective bargaining. We shall, therefore, make no determination with respect to the Central employees at this time, but shall first ascertain their desire as expressed in the election directed herein.<sup>8</sup>

We shall direct an election among the following employees: All patternmakers and helpers at the Employer's Central Pattern Shop Division, South Milwaukee, Wisconsin, excluding all other employees and supervisors as defined in the Act.

If a majority of the employees in the voting group cast their ballots for the Union, they will be taken to have indicated their desire to be part of the existing production and maintenance unit at the Employer's Badger Malleable & Manufacturing Company foundry at South Milwaukee, Wisconsin, and the Regional Director will issue a certification of results of election to that effect. If a majority of the employees in the group cast their ballots against the Union, they will be deemed to have expressed their desire to remain unrepresented.

[Text of Direction of Election omitted from publication.]

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<sup>8</sup> See *Scrivner Stevens Company*, 104 NLRB 506, 507.

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**Cone Brothers Contracting Company and Raymond W. Norman.**  
*Case No. 12-CA-1406. July 26, 1961*

#### DECISION AND ORDER

On September 23, 1960, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that  
132 NLRB No. 37.