

Libbey-Owens-Ford Glass Company and United Glass and Ceramic Workers of North America, AFL-CIO, CLC, and its Locals Nos. 1, 5, 9, 19, 33 and 418, Petitioner. Case 6-UC-4

January 12, 1968

DECISION AND DIRECTION OF ELECTIONS

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

On January 30, 1939, the National Labor Relations Board certified United Glass and Ceramic Workers of North America, AFL-CIO, CLC,¹ as the bargaining representative of the production and maintenance employees² of Libbey-Owens-Ford Glass Company at its plants situated in Shreveport, Louisiana; Ottawa, Illinois; Charleston, West Virginia;³ and Rossford and East Toledo, Ohio.

On July 13, 1966, the Petitioner filed a petition to clarify the certification by including in the above unit the production and maintenance employees at the Company's plants in Lathrop, California, and Brackenridge, Pennsylvania. On September 8 and 9, a hearing was held before Hearing Officer Herbert Schutzman for the purpose of taking testimony with respect to the issues raised by the petition. All parties appeared and participated at the hearing. On October 18, 1966, the Regional Director for Region 6 issued an order transferring the case to the Board. The Company and the Petitioner thereafter filed briefs with the Board.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

The Company has 10 plants⁴ at which it is engaged in the production and fabrication of glass and

glass products.⁵ Eight of these plants now constitute the multiplant unit in which the Petitioner was certified,⁶ while the other two plants, one at Brackenridge and one at Lathrop, constitute separate bargaining units.⁷ As indicated above, the Petitioner now seeks to combine these three separate units into a single employerwide unit of all the Employer's glass manufacturing facilities.

The multiplant bargaining history is of long duration, having continued essentially unchanged since at least 1939. Prior to that time the Company had granted voluntary recognition to the Union and had signed collective-bargaining agreements covering multiplant units which varied in scope. The Employer acquired the Brackenridge plant in 1943 and recognized the Petitioner as the representative of the employees at that location, negotiating and signing a number of separate contracts for that unit thereafter. The petition in this case was filed 79 days before the expiration of the then existing Brackenridge contract, and the current contract for that plant was entered into while this proceeding was pending.

In 1962 the Employer built the Lathrop plant and employees from other plants were afforded an opportunity to work there. All who were selected, whether in layoff status or actively working, went there as new employees carrying no seniority with them, and all lost their seniority rights at the other plants.⁸ In the multiplant negotiations of 1961, the Union requested inclusion of the Lathrop plant in the multiplant unit, but the Company refused, and a multiplant contract was signed which expires October 25, 1968. Eventually the Petitioner was recognized as representative of the employees at the Lathrop plant and the present contract expires June 19, 1969.⁹ In 1965, during multiplant negotiations, the Petitioner for the first time sought the inclusion of Brackenridge as well as Lathrop in the multiplant unit, and again the Employer rejected the requested expansion.

¹ 10 NLRB 1470. The Petitioner is herein referred to by its present name, although on the date it was certified it was known as Federation of Flat Glass Workers of America, and, in 1941, its name was changed to Federation of Glass, Ceramic and Silica Sand Workers of America.

² This certification excluded window glass cutters who were, and are, represented by the Window Glass Cutters League of America.

³ The unit as certified included a plant at Parkersburg, West Virginia, but that plant became a separate unit as a result of the Board's decision of April 23, 1941 (31 NLRB 243), and it was sold in 1958.

⁴ There are two plants each in Toledo and Rossford, Ohio, and Ottawa, Illinois, and one plant in Shreveport, Louisiana, and Charleston, West Virginia, and in addition the plants at Brackenridge and Lathrop here in issue.

⁵ The Company owns two other plants, but neither party seeks their inclusion in the multiplant unit, since one is an experimental plant manned solely by technical employees, and the other is a recently acquired subsidiary engaged in the production of plastic and metallic dies, patterns, and molds.

⁶ That unit is described as "All production and maintenance employees who are employed at the Company's Plate, Safety and Thermopane Glass plants located at Toledo and Rossford, Ohio, and Ottawa, Illinois, and its Window Glass plants located at Charleston, West Virginia and

Shreveport, Louisiana, excepting employees in the Window Glass plants who are in the bargaining unit represented by the Window Glass Cutters League America and excepting supervisors and clerical employees not directly connected with production."

⁷ The unit descriptions are:

At Brackenridge - "All production and maintenance employees who are employed at the Company's plant located at Brackenridge, Pennsylvania, excepting supervisors, and clerical employees not directly connected with production."

At Lathrop - "All hourly-paid production and maintenance workers employed by the Company at its Lathrop, California plant, but not including salaried employees, guards, janitors, office clerical workers, or any supervisory employees with the right to hire, fire, or otherwise discipline employees or effectively recommend such action."

⁸ Employees who transferred to Lathrop did retain seniority for purposes of certain vested pension rights and, under a later agreement, for vacation and insurance benefits.

⁹ The contract provides that if Lathrop were added to the multiplant unit, the Lathrop agreement would terminate on October 25, 1968, which is the date for the expiration of the multiplant contract, and that if the Petitioner's demand were not resolved to its satisfaction by June 19, 1967, the Petitioner was free to strike on this issue alone.

It is apparent that all the plants involved are engaged in essentially the same basic operations in that all are producing and fabricating glass and/or glass products. Of the eight in the multiplant unit, five produce raw plate glass and fabricate it, while the other three are engaged solely in fabrication. The Brackenridge plant is also engaged in fabrication from raw glass which is obtained both from producing plants within the multiplant unit and from other suppliers. The sole difference between Brackenridge and the other plants is that Brackenridge, in addition to making other products which are typically multiplant operations, is the only plant which fabricates filmed surface glass products and mirrors. The Lathrop plant uses a new and different method of producing glass known as the new float process, and fabricates it into solid safety curved side and back lights for automobiles and cut sizes for the jobbers trade. While there is no basis for concluding that the operations of the various plants are integrated, there is also no basis for finding any greater operational or administrative integration among the eight plants in the multiplant unit than between the Brackenridge and Lathrop plants, individually or collectively, and the other eight plants or any of them.

It is clear from the above facts that separate plant units are presumptively appropriate. It is also apparent that a multiplant unit may be equally appropriate where, as is true of the existing eight-plant unit here, it is agreed to by the parties. Of course, an employerwide unit is also presumptively appropriate,¹⁰ but the Board has consistently held that separate historical units do not automatically merge where the operations are not integrated¹¹ or there is no indication that the parties mutually intended to effect a consolidation thereof.¹² Not only has the Employer failed to agree to such a merger, it has vigorously opposed it on various grounds.

The Employer contends that both the multiplant unit and the Brackenridge unit include guards as defined in the Act, and it contends that neither of these units may be clarified by the Board because to do so would be in contravention of Section 9(b) of the Act. That section precludes the Board from finding appropriate any unit which includes with other employees any individual employed as a guard.¹³ The Union has stated, however, that it

seeks clarification of its multiplant unit with the exclusion, *inter alia*, of such categories as the Board, either by statute or by decision, customarily excludes from production and maintenance units. We construe this statement as an acknowledgment by the Union that the guards may not be included in a unit found appropriate by the Board and a request that the Board clarify the unit or units by excluding them.¹⁴ Accordingly, we shall clarify the multiplant unit and the unit of Brackenridge employees by excluding therefrom any individuals who are employed as guards as defined in the Act.

The Company's main contentions are that the proper procedure would have been a representation petition under Section 9(c), which would, however, have been barred by existing contracts, and that the Union has adopted the wrong method. Thus, the Employer argues that in a 9(c) proceeding the Board could determine the inclusions and exclusions of such a unit and arrange an election to provide the employees an opportunity to decide "whether they want union representation and who, if anyone, should represent them" as well as "whether they want to all be included in the same unit or be represented in separate units." It argues that the procedure for clarification of units was never intended to accomplish the combination of existing units but only to resolve questions concerning whether disputed job classifications should be included in or excluded from a unit. It appears that the basic reason underlying the Employer's opposition to this procedure is its view that the employees should be permitted to decide whether they want to be included in the same unit or represented in separate units.

We find no merit in the Employer's position that the Union was required to resort to a representation proceeding to resolve the issue. Although it may well be that the Board would reach and determine the unit issue here posed in such representation case, seeking an election that is timely with respect to the existing contract, there is no reason why that is the only route for the resolution of the question. It is certainly not the best route either, where, as in this case, there is no actual question concerning representation because the Employer does not dispute the Union's representative status at any of the plants.

¹⁰ See *Owens-Illinois Glass Company*, 136 NLRB 389, 392

¹¹ *Bath Iron Works Corporation*, 154 NLRB 1069

¹² See *Univac Division, Sperry Rand Corporation*, 158 NLRB 997; *Remington Office Machines, Minneapolis Branch, Division of Sperry Rand Corporation*, 158 NLRB 994. Compare *Chrysler Corporation*, 42 NLRB 1145, in which the parties bargained jointly for and applied the terms of one contract to all plants.

We note that the cases cited by the Company herein are inapposite, some because they involve situations where a union was seeking to add previously unrepresented employees to an existing unit as an accretion thereto and others because they sought clarification of uncertified units at a time when the Board declined to give such relief under a now overruled holding. None of those noted by the Employer involved facts like those

herein, where a labor organization seeks clarification of a unit in which it was certified by the inclusion of another existing unit or units in which it was the incumbent, recognized representative

¹³ We note that the Employer's brief incorrectly states that Section 9(b)(3) of the Act disqualifies a union as the representative of production and maintenance employees if it also represents guards. On the contrary, that section of the Act provides that such a union may not be certified as representative of a guard unit, but permits it to continue to represent other employees.

¹⁴ In this connection, we note that in any event the Board may so clarify the existing certified unit on its own motion as part of its authority to police its certifications. *Briggs Manufacturing Company*, 101 NLRB 74, 76, fn. 4

If the overall 10-plant unit sought and the existing single-plant units are all presumptively appropriate, it is not a difficult matter for the Board to make available to the employees in each of the hitherto separately represented plants an opportunity to express their preferences in a secret-ballot election between continued representation in their one-plant units, or addition to the multiplant unit. And the current contracts for those separate plants interpose no bar to such separate self-determination elections because the purpose of this proceeding is not to affect existing contracts, but to mark out the appropriate unit for future bargaining. Moreover, the Brackenridge contract was entered into after the institution of these proceedings, and the Lathrop contract expressly provides for adoption of the overall contract's terminal date if Lathrop were added to the multiplant unit, thus revealing the parties' acceptance of the possibility that Lathrop might be added to the multiplant unit prior to that contract's termination.

We conclude from the above review of outstanding principles and the arguments herein that the Petitioner has adopted a procedure which would appear to encompass its desired relief. We are unable to perceive any reason why a further delay should be required where, as here, no question of the presumptive propriety of the employerwide unit exists and only the technical problems of bargaining history and employer opposition have prevented its establishment. The presently existing eight-plant unit encompasses plants which are between 4 and 986 miles from the Employer's home office in Toledo, Ohio, and hence is not based on any geographic considerations, while the Brackenridge and Lathrop plants are 240 and 2,367 miles from Toledo, respectively. As previously set forth, there is generally no greater functional or operational integration between the plants in the multiplant unit than between either of the two disputed plants and the others. Nor, in considering the equities of the positions of the Employer and of the Union, does there appear to be any justification, in the circumstances here, for affording absolute power to either one to compel the other to bargain in the three historical units rather than combining them into one presumptively appropriate employerwide unit of glass industry plants. Thus the existing multiplant unit is virtually employerwide, and there is no question that the Petitioner represents the employees at all the 10 plants. In a dispute such as this, it appears to us that the wishes of the disputed employees themselves should be solicited and that some means should be afforded by which they may

indicate their desires. Indeed, such a need is suggested by the Employer's criticism of a possible grant of the Union's request in its argument that a proceeding under 9(c) would give such an opportunity.¹⁵ Further, an outright rejection of this petition would leave the parties with no early source of relief by which the unit issue may be resolved and would serve merely to prolong the labor dispute. Such a result would unquestionably fail to promote the purposes and policies of the Act¹⁶ and would constitute a failure by this Board to fulfill its statutory function to decide in each case the appropriate unit and to afford a peaceful means for doing so.

Contrary to the view of our dissenting colleagues, we are not abrogating our statutory duty to determine the appropriate unit by using this means to ascertain the desires of the employees before finally deciding the appropriate unit or units here. On the contrary, having concluded that either an employerwide or the separate plant units now existing may be appropriate, we believe it entirely proper to take into consideration the wishes of the employees before determining in which unit or units future bargaining shall take place.

In making findings as to appropriate units, the Board reviews all relevant factors. There is nothing in the statute to prevent our giving some weight to employee preference in reaching a final decision. Rather, we view such wishes as one of many relevant facts to be considered. Where, as here, employee desires become relevant, the Board, under its inherent investigatory powers, may take appropriate measures, including the holding of elections, to ascertain what the facts may be. The Board has long given some weight to employee expressions of preference determined through the election procedure, as illustrated by what have come to be known as *Globe* or self-determination elections. Such elections are uniformly conducted among the disputed employees and have received consistent acceptance notwithstanding that nowhere in the statute are they mentioned or specifically authorized, except for the Section 9(b) requirement, adopted in 1947, that the Board utilize its previously existing self-determination election procedure in certain situations involving professional and craft employees. Far from disapproving this use of employee preference as a factor and the means adopted to ascertain it, these requirements indicate Congressional approval thereof.

As is clear from the above discussion, we are persuaded that the Board's authority and practice in determining units and conducting elections, includ-

¹⁵ The Employer's argument is that an election would be proper to determine unit placement of the employees of the two disputed plants only if a rival labor organization were seeking to represent the two plants on some other basis and the employees were given a choice among at least two unions or neither. We see no sound reason to limit our utilization of a self-determination election to such circumstances.

¹⁶ Section 1(b) of the Act provides that: "It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other . . ."

ing the weight given to employee wishes as one fact and the holding of self-determination elections as an investigatory factfinding tool, are firmly based on the Act. And we are satisfied that our present Decision is within our statutory competency. There will be time enough to treat with the other questions which our dissenting members foresee if they in fact arise. We deal only with the immediate question presented to us, and we do so by using a new combination of long-established procedures, in order to put at rest a controversy that has admittedly been disturbing the relations of the parties for a number of years.

In view of the above, we shall direct that elections be conducted among the employees in the following voting groups:

(1) All production and maintenance employees who are employed at the Company's plant located at Brackenridge, Pennsylvania, excepting clerical employees not directly connected with production, and guards and supervisors as defined in the Act.

(2) All hourly paid production and maintenance workers employed by the Company at its Lathrop, California, plant, excluding salaried employees, guards, janitors, office clerical workers, and supervisors as defined in the Act.

The question on the ballot shall inquire whether or not the employees now separately represented by the Petitioner wish to be represented by that Union as part of the multiplant unit now consisting of the Employer's glass plants at Toledo and Rossford, Ohio; Ottawa, Illinois; Charleston, West Virginia; and Shreveport, Louisiana. If a majority of the valid votes cast in either group are in favor of addition to the multiplant unit, the employees in such group shall have indicated their wish to be part thereof and we find that such an enlarged multiplant unit is appropriate. In the event a majority of the valid votes cast in either group are against addition to the multiplant unit, the employees in that group shall have indicated their desire to continue to be represented separately, and the Regional Director will issue a certification of results of election to that effect. The election shall be conducted pursuant to National Labor Relations Board Rules and Regulations, Series 8, as amended, to the extent they provide applicable procedures.

ORDER

It is hereby ordered that the certification of representatives issued to the predecessor of United Glass and Ceramic Workers of North America, AFL-CIO, CLC, on January 30, 1939, be, and it hereby is, clarified by excluding therefrom individuals employed as guards within the meaning of the Act.

IT IS HEREBY FURTHER ORDERED that the unit of production and maintenance employees at the Employer's Lathrop, California, plant, represented by the said Union and its Local No. 418, be, and it hereby is, clarified by excluding therefrom individuals employed as guards within the meaning of the Act.

[Direction of Election¹⁷ omitted from publication.]

Member Fanning and Member Jenkins, concurring in part and dissenting in part:

We concur with our colleagues in clarifying the existing multiplant unit to the extent of excluding therefrom individuals employed as guards. Our colleagues, however, are also directing elections aimed solely at merging separate plant units with the multiplant unit. They devise elections whereby employees at two plants in widely separated States – already represented by the petitioning Union in separate plant units – may vote whether they wish to be included in the existing eight-plant unit represented by this same Union.

Although our colleagues readily recognize that no established principles cover this situation, they ignore the fact that the void they undertake to fill – “to mark out the appropriate unit for future bargaining” without affecting existing contracts and, obviously, without reference to a representation issue – is a statutory void.¹⁸ Authorization for this type of election is completely lacking under the Act. Representation is not in issue in this case. Unit scope is.¹⁹

One cannot quarrel with the majority statement that “it is not a difficult matter” for the Board to make available a secret-ballot election tailored to this situation. Mechanically this is quite true. What

¹⁷ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 6 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

¹⁸ Recent Annual Reports of this Board have said: “Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining . . .” (Emphasis

supplied.) See 1964, 1965, 1966 Annual Reports, Section V Representation Cases.

¹⁹ As the apparent intent is to have the employees concerned decide this question of merger of units – a goal with considerable merit – we have some difficulty understanding why they do not have all employees affected express a choice, thus voting the employees in the multiplant unit as well. These employees may not wish to have their eight-plant unit further enlarged, one of the effects of which is to increase the problem of changing their bargaining representative in future years, just as the employees in the single-plant units may not wish to be overwhelmed from a voting standpoint by inclusion in a unit of many plants located in four additional States.

is difficult is to find in the Act the statutory authority for so doing in these circumstances, and hence for the expenditure of funds for this purpose. There simply is no present statutory authority for permitting employees to decide, in a representational vacuum, which *contract* unit they wish. True, in "Globe," or so-called self-determination elections, the Board has long given weight to employee expression of unit preference *in connection with selection of a bargaining representative*. This is because a question concerning representation exists and Section 9(c)(1) of the Act specifically authorizes an election in those circumstances. The election is held to select a bargaining representative, and only by reason of the selection of a particular representative rather than another representative does the employee register a preference as to unit. As for the 1947 amendments to Section 9(b) which provide for a vote on unit by professionals, and a vote against separate representation by craft employees in certain circumstances, these provisions are actually limitations imposed by Congress on the Board's authority to define units - limitations within the overall pattern of Section 9 of the Act specifying the circumstances in which elections shall be held. This pattern is further exemplified by the 1947 provision in then Section 9(e)(1), authorizing elections in affected units to determine union-security authorization, and in then Section 9(e)(2), authorizing similar elections for union-security deauthorization. Authority for the former has since been withdrawn by Congress - again within the statutory pattern of specifying what types of election the Board shall hold. These statutory realities are ignored by the majority.

The existence of this void in the statutory scheme is not denied by our colleagues. Instead they speak of the "technical problems of bargaining history and employer opposition" having prevented establishment of a presumptively appropriate employerwide unit, and perceive no reason for further delay in supplying a solution to the problem, or for leaving the parties with no early source of relief. At best it seems cavalier to treat employer opposition to a request for bargaining on a countrywide, multiplant

basis as a mere technical problem. It is a factor to be seriously considered. The mere fact that the Employer and the Union here take opposite positions on the question of enlarging the unit for *future* bargaining does not, to our way of thinking, justify rationalizing the existence of the requisite authority for solution by the employees.

One wonders whether our colleagues have considered what action they would take with respect to various problems that may arise within the existing statutory framework. Suppose that within the next few months a rival union enters the picture requesting representation in any of these existing units, at an appropriate time with respect to the existing contracts. In view of Section 9(c)(3), which prohibits an election in any bargaining unit or subdivision within which a *valid election* shall have been held in the previous 12-month period, will our colleagues process such petitions, saying that the elections now directed were not "valid" elections within the meaning of 9(c)(3)? Or, will they say these elections were not the sort contemplated by Section 9(c)(1)? But, if the latter, where then in this Act is there so much as a suggestion of authority for elections simply to decide unit questions? Or, suppose that a rival union, armed with a 30 percent showing, appears on the scene now and seeks to participate in the elections here directed? Is it to be denied the right to do so under the Board's contract-bar rules, while, at the same time, the bar problem is brushed aside so far as employee determination of unit is concerned?

If Congress wished unit determinations to be made through Board processes when the context is one of threatened strikes and no question of representation exists, it can easily so provide. It can also easily provide that such nonrepresentational determinations may be settled at any time through Board-directed elections. But it has not so far done this, and as matters stand, the merger of units is left to voluntary bargaining by the parties unless the choice of a bargaining representative is an issue.

Accordingly, we dissent from the majority opinion insofar as it directs elections in this unit clarification proceeding.