

Libbey-Owens-Ford Company and United Glass and Ceramics Workers Of North America, AFL-CIO, CLC, and its Locals Nos. 477, 1, 5, 9, 19, 33, and 418, Petitioner. Case 6-UC-43

April 16, 1971

DECISION AND ORDER

On January 30, 1939, the National Labor Relations Board certified the Petitioner as the bargaining representative of the production and maintenance employees of the Employer at its plants situated in Shreveport, Louisiana; Ottawa, Illinois; Charleston, West Virginia; and Rossford and East Toledo, Ohio.¹ Upon a petition duly filed by the Petitioner seeking to clarify that certification, in pertinent part, by including therein employees of the Employer's plants in Brackenridge, Pennsylvania, and Lathrop, California, the Board issued a Decision and Direction of Elections² and Supplemental Decision and Order Clarifying Unit,³ clarifying the multiplant unit to include the Brackenridge and Lathrop employees.

On March 25, 1970, the Petitioner filed this petition to clarify the certification further by including in the multiplant unit employees at the Company's Mason City, Iowa, plant through the election process utilized in said *Libbey-Owens-Ford* Decision and Direction of Elections.⁴ On August 17 and 18, 1970, a hearing was held before Hearing Officer Samuel S. Blaufeld for the purpose of taking testimony with respect to the issues raised by the petition. All parties appeared and participated at the hearing. On September 2, 1970, the Regional Director for Region 6 issued an order transferring the case to the Board. The Petitioner and the Employer thereafter filed briefs with the Board.⁵

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.

The issues in this case are in all pertinent aspects identical to those before us in *Libbey-Owens-Ford Company*, 169 NLRB 126, and 173 NLRB No. 187. There, as here, this Petitioner sought to utilize the Board's unit clarification procedures to absorb into an existing certified multiplant unit represented by it, separately existing single-plant units also represented by it. For the reasons fully set forth in our dissenting

opinion reported at 169 NLRB 126, 129, we conclude that the Board is without statutory authority to grant the relief sought in the absence of a question of representation.⁶ Therefore we shall dismiss this petition to clarify the existing certification.

ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

CHAIRMAN MILLER, concurring:

I concur in the dismissal of this petition for reasons stated in my separate opinion in *Libbey-Owens-Ford Company*, 189 NLRB No. 139, issued this day. I need add only that in my judgment, the matter of including appropriate single-plant units in larger, multiplant units should be decided on a consensual basis by the parties to the bargaining relationship. I believe the Board erred seriously in *Libbey-Owens-Ford Company*, 169 NLRB 126, when it departed from its longstanding practice and directed the merger of well-established separate appropriate units over the objections of one of the parties to the bargaining relationship.

MEMBER KENNEDY, concurring:

The Petitioner organized these employees, sought certification as their representative in a unit limited to the Mason City plant, and was certified as such representative on December 8, 1967, all at a time when Petitioner's request to add the employees of the Employer's Lathrop and Brackenridge plants to its existing multiplant unit was then pending before the Board. Thereafter, the petitioner executed a contract with the Employer covering these employees in the separate plant unit and continued thus to represent them on a single-plant basis for more than 2 years before filing its petition in these proceedings to add them also to the multiplant unit.

Although I do not agree that the Board is without statutory authority to act in the manner requested in this unit clarification proceeding, I nevertheless would not, under all the circumstances here present, grant such request. Accordingly, I join in the dismissal of this petition.

MEMBER BROWN, dissenting:

I cannot agree that this petition should be dismissed, but would clarify the unit with or without an

¹ 10 NLRB 1470

² 169 NLRB 126

³ 173 NLRB No. 187

⁴ The single-plant unit at Mason City was certified by the Regional Director on December 8, 1967, in Case 18-RC-7226. The Board's Decision and Direction of Elections in 169 NLRB 126 issued on January 12, 1968. No effort was made to have the Mason City plant included in the then pending clarification proceeding.

⁵ The Employer's request for oral argument is hereby denied as the record and the briefs adequately present the issues and the positions of the parties.

⁶ We note also that in *Bath Iron Works Corporation*, 154 NLRB 1069,

1071, a unit clarification proceeding brought by the employer to clarify its bargaining obligations in light of a recent corporate merger, where the union urged *unit* merger, a panel of Chairman McCulloch and Members Fanning and Brown declined to merge two separate units "in this type of proceeding." One was a unit of draftsmen long recognized at Bath Iron, a ship building company, and the other a certified unit of draftsmen at a corporation designing and fabricating manne deck and other industrial equipment. The two operations were contiguously located. The certification occurred at a time when Bath Iron owned the corporate stock of its neighboring company and was operating it as a wholly owned subsidiary before the merger.

election. For reasons fully expressed in the majority opinion in *Libbey-Owens-Ford Company*, 169 NLRB 126, in which I participated, I believe it entirely appropriate to direct an election herein and, upon the conclusion of that election, issue the appropriate

certification. And even if we are not empowered to conduct a self-determination election in these circumstances, I see no statutory bar to evaluating the facts and resolving the merits of the clarification petition without such election.