

IN the Matter of THE MURRAY COMPANY and UNITED STEELWORKERS OF AMERICA, CIO

*Case No. 16-R-843.—Decided April 11, 1944*

*Mr. C. D. West*, of Dallas, Tex., for the Company.

*Mr. Thos. Peasner*, of Dallas, Tex., for the USA.

*Mr. C. L. Mulholland*, of Dallas, Tex., for the IAM.

*Miss Melvern R. Krelow*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by United Steelworkers of America, CIO, herein called the USA, alleging that a question affecting commerce had arisen concerning the representation of employees of The Murray Company, Dallas, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Glenn L. Moller, Trial Examiner. Said hearing was held at Dallas, Texas, on March 3, 1944. The company, the USA, and International Association of Machinists, herein called the IAM, 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. At the commencement of the hearing the IAM filed a motion to dismiss the petition. The Trial Examiner reserved ruling to the Board. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an 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

The Murray Company is a Texas corporation with its principal office and place of business in Dallas, Texas. The Company is normally 55 N L R. B., No. 217.

engaged in the manufacture, sale, and distribution of cotton gin equipment and various other products. At the present time it is engaged in the manufacture of various essential war materials for the Ordnance Division of the War Department, all of which materials are shipped by the Company to points outside the State of Texas. The principal raw material used by the Company, both in its normal operations and in its production of war materials, is steel, of which the Company's annual purchases exceed \$70,000 in value. Approximately 90 percent of said steel is shipped to the Company from points outside the State of Texas. Approximately 70 percent of the cotton gin equipment manufactured by the Company is shipped to points outside the State of Texas.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

During 1943 the Company negotiated collective bargaining contracts with the USA, International Molders and Foundry Workers Union, and the IAM. Each of these unions represented different groups of employees. The IAM's contract covered all employees of the Machine Shop Departments Nos. 2 and 3, Sheet Metal Department No. 9, and Paint Shop Department No. 12.<sup>1</sup> Early in December 1943, the Company notified all three unions that it wished to place all of its collective bargaining contracts on a calendar year basis, and requested the unions to reexecute their contracts. The USA refused to accede to this request, and at the same time advised the Company that it had organized a majority of the employees in the Sheet Metal Department, and warned the Company not to execute a contract with any other labor organization purporting to represent those employees.<sup>2</sup> On February 8, 1944, the USA was

<sup>1</sup> This contract was executed on March 15, 1943, and was to remain in full force and effect until March 15, 1944, and from year to year thereafter "until either party shall give the other thirty (30) days' notice of a desire to change or for termination."

<sup>2</sup> The record also discloses that on or about December 1, 1943, the president of the USA local advised the personnel director of the company of the USA's claim to represent a majority of the employees in the Sheet Metal Department.

informed by the Company that no new contract had been signed involving the Sheet Metal Department employees. On February 9, 1944, the USA requested recognition from the Company as the collective bargaining agent for those employees. The Company refused on the ground that it had just completed negotiations with the present collective bargaining agent, the IAM. The present contract between the Company and the IAM which covers the same employees as covered in the previous contract, does not reveal the date of its execution, but by its terms is to cover the period from January 1, 1944, to December 31, 1945. The Company and the IAM contend that the contract, effective as of January 1, 1944, is a bar to a present determination of representatives. However, it is clear that the Company received timely notice from the USA, and we find, therefore, that the contract is not a bar to a determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the USA represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 USA contends that all employees in the Company's Sheet Metal Department, excluding supervisory, clerical, and professional employees, constitute an appropriate bargaining unit. The IAM contends that the unit is inappropriate. The Company takes no position with respect to the unit.

Organization of the Company's employees, which has been on a departmental basis, was begun in 1937 by the USA. Toward the latter part of 1938, the USA was recognized by the Company as the bargaining agent for the employees in the Company's Structural Shop Department, and a collective bargaining contract covering these employees was executed by the Company and the USA. The USA continued organizing the Company's employees, and over a period of several years has obtained recognition as the bargaining representative of employees in other departments. In about 1940 or 1941 the IAM began its attempts to organize the Company's employees, and shortly thereafter succeeded in obtaining recognition as the bargain-

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<sup>3</sup> The Field Examiner reported that the USA submitted 15 applications for membership cards; that the names of 11 persons appearing on the cards were listed on the company's pay roll of February 13, 1944, which contained the names of 20 employees in the appropriate unit; and that all the cards were dated between November 16, 1943, and January 14, 1944.

The contract sufficiently established the interests of the IAM.

ing agent for the employees in the Company's Machine Shop Department.

On February 13, 1942, the IAM filed three petitions, one seeking an election in the Paint Shop Department, one in the Sheet Metal Department, and one in the Saw Shop Department. The USA intervened only in the proceeding involving the Saw Shop Department. A card check was conducted with respect to the other proceedings, and the IAM was found to represent those employees. A consent election was held with respect to the Saw Shop Department, and the USA was selected as the bargaining representative. Thereafter, the USA was recognized as the bargaining representative of the Shell Shop, and later for the Bomb Shop, the two constituting one department, and both were brought under the USA's contract by supplemental agreement. The record does not indicate when the International Molders and Foundry Workers Union organized the foundry employees.

The IAM contends that the Sheet Metal, the Paint Shop, and the Machine Shop Departments constitute an appropriate unit on the basis of its collective bargaining history with the Company. We have, however, frequently held that collective bargaining is in itself not necessarily determinative of an appropriate unit where other factors might outweigh such consideration.<sup>4</sup> Here, the employees in the Sheet Metal Department engage in work which is confined to that department, there is no interchange of employees between that department and other departments in the plant, and the skills and work of such employees are different from those of the other production and maintenance employees. Although the employees in the Machine Shop, the Paint Shop, and the Sheet Metal Departments have been included under a single collective bargaining agreement, as indicated above, the duties of the employees in the Sheet Metal Department reveal no more functional coherence and interdependence with the Paint Shop and Machine Shop Departments than exists generally among all departments of the plant. The inclusion within a contract of various groups of employees cannot in itself establish the homogeneity requisite to the finding of an appropriate unit where such homogeneity does not otherwise exist; nor does the representation of such non-integrated groups by a single union eliminate this prerequisite.

We find that all employees in the Sheet Metal Department of the Company, excluding clerical and professional 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

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<sup>4</sup> See *Matter of Willys Overland Motors, Inc.*, 52 N. L. R. B. 109; *Matter of Indianapolis Power & Light Company*, 51 N. L. R. B. 670; *Matter of Boston Edison Company*, 51 N. L. R. B. 118; *Matter of El Paso Electric Company*, 50 N. L. R. B. 56.

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 pay-roll 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, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Murray Company, Dallas, Texas, 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 Sixteenth 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 pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll 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 those employees 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 they desire to be represented by United Steelworkers of America, CIO, or by International Association of Machinists, for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.