

In the Matter of THE H. NEUER GLASS COMPANY and FEDERATION OF
FLAT GLASS WORKERS OF AMERICA

Case No. R-269.—Decided November 10, 1937

Glass Products Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning union as bargaining agency; prior strike caused by such refusal—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; wage, hour, and occupational differences; history of collective bargaining with employer—*Representatives:* proof of choice: petition authorizing petitioning union to bargain collectively on behalf of signers—*Certification of Representatives:* upon proof of majority representation.

Mr. William J. Perricelli, for the Board.

Mr. James L. Magrish, of Cincinnati, Ohio, for the Company.

Mr. Edward Lamb, of Toledo, Ohio, for the Glass Workers Union.

Mr. Ellsworth Bundy, of Cincinnati, Ohio, for the Glaziers Local.

Mr. Harry A. Sellery, Jr., of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 29, 1937, Federation of Flat Glass Workers of America, herein called the Glass Workers Union, filed with the Regional Director for the Ninth Region (Cincinnati, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The H. Neuer Glass Company, Cincinnati, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 9, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 2, 1937, the Regional Director issued a notice of hearing to be held at Cincinnati, Ohio, on August 9, 1937, copies of which

were duly served upon the Company, the Glass Workers Union, the Brotherhood of Painters, Decorators, and Paperhangers of America, Glaziers Local No. 387, herein called the Glaziers Local, and the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local No. 100, herein called the Brotherhood of Teamsters. Pursuant to the notice, a hearing was held on August 9, 1937, before Fred A. Hughes, the Trial Examiner duly designated by the Board. The Board, the Glass Workers Union, and the Company were represented by counsel, and the Glaziers Local was represented by its business agent. All participated in the hearing. The Brotherhood of Teamsters, although duly served with a copy of the notice of hearing, did not appear at nor participate in the hearing.¹

Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence on the issues was afforded all parties present at the hearing. The Trial Examiner reserved ruling on a motion by the Company to dismiss the petition for lack of jurisdiction. The motion is hereby denied.

The Board has reviewed the rulings of the Trial Examiner on objections to the admission of evidence made during the course of the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS

The H. Neuer Glass Company, an Ohio corporation incorporated on March 2, 1909, and having its only office and plant located in Cincinnati, Ohio, is engaged in a country-wide business of glass-jobbing; selling, and glazing of plate and window glass, and the production of mirrors, furniture glass tops, and glass for art furniture. The Company purchases all glass used by it from one glass manufacturer, Libbey-Owens-Ford Glass Company, of Toledo, Ohio, and such purchases, totalling approximately 15,000 square feet of plate glass and 45,000 square feet of window glass per month, are delivered to the Company's plant by motor carrier. The Libbey-Owens-Ford Glass Company has two plants in Ohio and one in Illinois manufacturing, grinding, and polishing plate and safety glass, and one in West Virginia and one in Louisiana manufacturing window glass.² Other materials, amounting to approximately ten per cent of the total purchases, are obtained outside Ohio and include pigment and lacquer

¹The employees of the Company over whom the Brotherhood of Teamsters have jurisdiction were not in the unit alleged in the petition to be appropriate for the purposes of collective bargaining.

²Board's Exhibit No. 3E.

from Pennsylvania, silver nitrate from Pennsylvania and Missouri, rouge from New York, and mirror frames from Illinois. The bulk of the Company's business is glass-jobbing, about 50 per cent of which also involves glazing. Approximately 20 per cent of the glass purchased is used in the production of mirrors. The Company operates four trucks for local hauling and these trucks make trips at frequent intervals across the Ohio River to nearby parts of Kentucky; shipments to other places are made by motor carriers. One of such carriers has solicited sales for and made deliveries of the Company's products in Indiana. During the period from January 1 to June 30, 1937, between 36 and 37 per cent of the Company's products were sold in states other than Ohio. Two of its six salesmen operate in Kentucky and Indiana.

Excluding office workers and salesmen, the Company ordinarily employs approximately 45 employees, the actual number thereof fluctuating in accordance with the volume of the Company's business.

II. THE ORGANIZATIONS INVOLVED

Federation of Flat Glass Workers of America, Local Union No. 43, is a labor organization, affiliated with the Committee for Industrial Organization. It admits to membership employees in the production and maintenance departments of the Company's plant, but no glazier employed by the Company is a member thereof.

Brotherhood of Painters, Decorators, and Paperhangers of America, Glaziers Local No. 387, is a labor organization, admitting only glaziers among the Company's employees to membership. It is affiliated with the American Federation of Labor.

International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local No. 100, is a labor organization, affiliated with the American Federation of Labor. The only member thereof employed by the Company is its truck driver.

III. THE QUESTION CONCERNING REPRESENTATION

In June and July 1937, there was a three-week strike of the Company's production and maintenance employees. During such strike the products shipped by the Company from its plant were from stock previously produced therein. Certain types of production, such as the manufacture of framed mirrors, were completely stopped by the strike. This strike had been called because of the Company's refusal to bargain collectively with its production and maintenance employees. The grounds for such refusal were stated to be a lack of evidence that the Glass Workers Union represented a majority of the production and maintenance employees and also an inability on the part of the Company to bargain with two unions not affiliated with

the same labor organization. At the end of three weeks the striking employees returned to work pending the outcome of this proceeding.

We find that a question has arisen concerning the representation of employees of The H. Neuer Glass Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON COMMERCE

We have previously discussed the strike which compelled the Company substantially to cease production in its plant.

We find that the question concerning representation which has arisen, in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The petition of the Glass Workers Union alleged that the appropriate bargaining unit consisted of the 45 employees engaged in the processing and manufacturing of mirrors and excluding glaziers, truck drivers, and office workers. At the commencement of the hearing an organizer for the Glass Workers Union likewise excluded the glaziers from his union's claims to representation, although at the conclusion of the hearing he asserted its jurisdiction over such workers. With the exception of the glaziers the Company's production and maintenance employees receive, as an average, wages ranging from \$21.60 to \$30.00 per week and work nine and one-half hours per day for five days a week and five hours on Saturdays. They are all employed inside the Company's plant.

No question has been raised as to the propriety of limiting the unit to the Company's production and maintenance employees. The only question is whether, in accordance with the claim made by the Glass Workers Union at the close of the hearing, the glaziers shall be included in the combination with the Company's other production and maintenance employees.

The Glaziers Local has had a closed shop contract with the Company for 24 years. The glaziers employed by the Company receive a wage of \$1.55 per hour, and work eight hours per day and 40 hours per week when work is available. Their work is principally performed outside the plant, although when circumstances require they are employed inside the plant, at times at work other than glazing. Whatever work the glaziers perform, however, they receive the same wage. At the hearing there was uncontradicted testimony that glazing requires a degree of skill higher than that of the other production and maintenance employees. It is significant that the

strike previously mentioned did not include the office workers, the salesmen, the truck driver, nor the glaziers.

We conclude that in these circumstances the glaziers may properly be regarded as a separate bargaining unit.

No claim was made that supervisory employees should be included with the production and maintenance employees. In accordance with our usual practice, therefore, we hereby exclude supervisory employees from the combination of the Company's other production and maintenance employees.

In order to insure to employees of the Company the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that the production and maintenance employees of the Company, excluding supervisory employees, office workers, salesmen, glaziers, and truck drivers, constitute a unit appropriate for the purposes of collective bargaining.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing there was introduced into evidence a petition³ signed a few days before the hearing by 37 of the Company's 45 production and maintenance employees authorizing the Glass Workers Union to represent them for the purpose of negotiating a contract with the Company. All signatures on such petition were verified by two witnesses. The signers thereof include no office workers, salesmen, glaziers, or truck drivers. Accordingly, we find that the Glass Workers Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. The Glass Workers Union is, therefore, by virtue of Section 9 (a) of the Act, the exclusive representative for such purposes of all of the employees in such unit, and we will so certify it.

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of employees of The H. Neuer Glass Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the production and maintenance employees of The H. Neuer Glass Company, excluding supervisory employees, office workers, salesmen, glaziers, and truck drivers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

³ Petitioner's Exhibit No. 1.

CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Federation of Flat Glass Workers of America, Local No. 43, has been designated and selected by a majority of the production and maintenance employees of The H. Neuer Glass Company, Cincinnati, Ohio, excluding supervisory employees, office workers, salesmen, glaziers, and truck drivers, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Federation of Flat Glass Workers of America, Local No. 43, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.