

In the Matter of FOOD MACHINERY CORPORATION, ANDERSON-BARN-  
GROVER DIVISION and INTERNATIONAL BROTHERHOOD OF BOILER MAKERS,  
IRON SHIPBUILDERS & HELPERS OF AMERICA, LOCAL NO. 6, AFL

*Case No. 20-R-874.—Decided November 8, 1943*

*Mr. W. W. Jacka*, of San Jose, Calif., for the Company.

*Mr. Charles J. Janigian*, and *Mr. Charles Daley*, of San Francisco,  
Calif., for the Boiler Makers.

*Mr. James F. Galliano* and *Mr. F. W. Gorhman*, of Oakland, Calif.,  
for the IAM.

*Mr. William C. Baisinger, Jr.*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon petition and amended petition duly filed by International Brotherhood of Boiler Makers, Iron Shipbuilders & Helpers of America, Local No. 6, AFL,<sup>1</sup> herein called the Boiler Makers, alleging that a question affecting commerce had arisen concerning the representation of employees of Food Machinery Corporation, Anderson-Barngrover Division, San Jose, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John Paul Jennings, Trial Examiner. Said hearing was held at San Jose, California, on September 22 and 23, 1943. The Company, the Boiler Makers, and International Association of Machinists, District Lodge No. 93,<sup>2</sup> herein called the IAM,

<sup>1</sup> At the hearing the Trial Examiner granted the motion of the Boiler Makers to correct the name of the petitioner to read: "International Brotherhood of Boiler Makers, Iron Shipbuilders & Helpers of America, Local 6" instead of "International Brotherhood of Boiler Makers, Iron Shipbuilders, Welders & Helpers of America, Local No. 6" as it appears in the petition and other formal papers filed in this proceeding. We hereby order the caption and all other papers filed herein corrected in accordance therewith.

<sup>2</sup> At the date of the hearing the IAM was an unaffiliated labor organization, however, thereafter, by action taken at the American Federation of Labor convention on October 7, 1943, the IAM became affiliated with the American Federation of Labor. Pursuant to the request of the IAM, that the Board take judicial notice of this fact in connection with all matters coming before it or pending in which the IAM has an interest, we hereinafter refer to the IAM as the affiliate of the American Federation of Labor and hereby order all formal papers filed herein corrected accordingly.

appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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

Food Machinery Corporation is a Delaware corporation, having its principal office and place of business in San Jose, California, and maintaining other offices and other places of business in various States of the United States. The Company's plant at San Jose, California, is composed of two independently operated divisions known as the Anderson-Barngrover Division at which the Company is engaged in manufacturing and assembling various types of canning machinery and also in manufacturing amphibious tanks under a contract with the United States Navy, and the Bean Cutler Division, at which the Company manufactures fire fighting equipment and decontaminator units as well as various types of agricultural machinery. The present proceeding involves only the Anderson-Barngrover Division of the Company's San Jose, California, plant. At this Division the Company's annual production is valued in excess of \$2,000,000, of which over 70 percent is being shipped to points outside the State of California. The Company admits that at the Anderson-Barngrover Division of its San Jose, California, plant, it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Boiler Makers, Iron Shipbuilders & Helpers of America, Local No. 6, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Association of Machinists, District Lodge No. 93, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

#### III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

In April 1943, the Boiler Makers requested the Company to recognize it as the exclusive bargaining representative of all employees of the Company's Anderson-Barngrover Division, herein called the A-B Division, who are eligible for membership in the Boiler Makers organization. The Company refused to accord the Boiler Makers such

recognition. Thereafter, on June 8, 1943, the Boiler Makers filed the original petition in this proceeding, requesting a unit comprised of production and maintenance employees of the A-B Division. On or about August 12, 1943, the Boiler Makers filed an amended petition seeking a unit limited to the production and maintenance employees of the amphibious tank department of the A-B Division, herein referred to as the A-T department. At the hearing, the Company refused to recognize the Boiler Makers as the bargaining representative for the employees within the unit alleged to be appropriate in the amended petition, because, the Company contends, these employees are covered by the current collective bargaining contract between the Company and the IAM, and for the further reason that it disputes the appropriateness of such a unit.

The contract referred to above covers all production and maintenance employees employed at the Company's San Jose Divisions, excluding executives, supervisory employees, clerical workers, draftsmen, employees in the experimental department, foundry department, pattern shop, laboratory, time-study men, guards, timekeepers, watchmen, mailmen, janitors, operators in the blue-print room, and designing and sales engineers. It was executed on October 1, 1942, and according to its provisions, it is to continue in force and effect during the period of the National Emergency as proclaimed by the President of the United States and/or a period of 2 years, whichever is longer. Inasmuch as the contract was executed prior to the date on which the Company began to manufacture amphibious tanks, the Boiler Makers contends that it does not cover the employees within the unit which it alleges to be appropriate. Since we hereinafter dismiss the petition and amended petition filed herein on other grounds, we find it unnecessary to decide whether the aforesaid contract constitutes a bar to a determination of representatives.

It is apparent from the record before us that the I. A. M., which is now an affiliate of the American Federation of Labor, and the Boiler Makers each claims to represent the employees of the Company within the unit sought by the Boiler Makers. This controversy creates a jurisdictional dispute between two labor organizations affiliated with the same parent organization. We have customarily refused to resolve such disputes in the absence of a third union as a party to the proceeding also claiming to represent the employees in dispute and where it does not appear that the parent organization is incapable of adjudicating the controversy.<sup>3</sup>

In conformity with our prior decisions, we will not exercise jurisdiction in the dispute which has arisen herein between the I. A. M.

<sup>3</sup> See *Matter of Aluminum Company of America*, 1 N. L. R. B. 530; *Matter of Aston-Fisher Tobacco Company*, 1 N. L. R. B. 604; *Matter of Weyerhaeuser Timber Company*, 16 N. L. R. B. 902; *Matter of Houston Shipbuilding Corporation*, 41 N. L. R. B. 638; *Matter of Timm Aircraft Company*, 48 N. L. R. B. 505.

and the Boiler Makers. Accordingly, we find that no question has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) of the National Labor Relations Act and we shall therefore dismiss the petition and amended petition of the Boiler Makers.

#### ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition and amended petition for investigation and certification of representatives of employees of Food Machinery Corporation, Anderson-Barngrover Division, San Jose, California, filed by International Brotherhood of Boiler Makers; Iron Shipbuilders & Helpers of America, Lodge No. 6, AFL, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.