

In the Matter of BYRON JACKSON Co. and WESTERN MECHANICS,
LOCAL 700, IUMMSWA (CIO)

In the Matter of BYRON JACKSON Co. and INTERNATIONAL BROTHERHOOD
BLACKSMITHS, DROP FORGERS & HELPERS, AFL

Cases Nos. 21-R-2096 and 21-R-2128, respectively.—Decided
November 9, 1943

Latham & Watkins, by *Mr. Paul R. Watkins*, of Los Angeles, Calif.,
for the Company.

Katz, Gallagher & Margolis, by *Mr. Milton S. Tyre*, of Los Angeles,
Calif., and *Mr. Jack Marcotti*, of Los Angeles, Calif., for the CIO.

Mr. Dave Sokol, of Los Angeles, Calif., for the Metal Trades Council
and the PMA.

Mr. W. F. Jebe, of Los Angeles, Calif., for the PMA.

Mr. Roscoe V. Ickes, of Los Angeles, Calif., for the IAM.

Mr. Thomas L. Young, of Los Angeles, Calif., for the Warehousemen.

Mr. Robert Silagi, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by Western Mechanics, Local 700, IUMMSWA (CIO), herein called the CIO, and by International Brotherhood Blacksmiths, Drop Forgers & Helpers, AFL, herein called the Blacksmiths, each alleging that a question affecting commerce had arisen concerning the representation of employees of Byron Jackson Co., Los Angeles, California, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Daniel J. Harrington, Trial Examiner. Said hearing was held at Los Angeles, California, on September 24 and 28, 1943. The Company, the CIO, the Blacksmiths, International Association of Machinists, Lodge 311, herein called the IAM,¹ General Warehousemen's Local 598, herein

¹ The IAM has since reaffiliated with the American Federation of Labor.

called the Warehousemen, Pattern Makers Association of Los Angeles, herein called the PMA, and Los Angeles Metal Trades Council,² 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Byron Jackson Co., a Delaware corporation, operates plants in Vernon, Fresno, and Los Angeles, California; Houston, Texas; and Bethlehem, Pennsylvania, and has sales offices located in other communities throughout the country. Normally, the Company manufactures oil well tools and centrifugal pumps. At the present time, however, the Company's operations are largely devoted to essential war work consisting of a great many items of a confidential nature. The only plants of the Company involved in this proceeding are the two located on Vernon Avenue in Vernon, California, and one plant located on Slauson Avenue, in Los Angeles, California. Materials purchased for use in these three plants, consisting of various kinds of steel, including castings and formings, exceed \$500,000 in value per annum, more than half of which is shipped to the plants from points outside the State of California. Sales of products manufactured at the Vernon and Slauson plants exceed \$500,000 annually, of which products amounting in value to more than \$250,000 are transported to places outside the State of California.

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

II. THE ORGANIZATIONS INVOLVED

Western Mechanics, Local 700, affiliated with the International Union of Mine, Mill and Smelter Workers of America, and the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Brotherhood Blacksmiths, Drop Forgers & Helpers; International Association of Machinists, Lodge 311; General Warehousemen's Local 598, affiliated with the International Brotherhood of

² Before the termination of the hearing, the Los Angeles Metal Trades Council withdrew from the proceedings.

Teamsters, Chauffeurs, Warehousemen, and Helpers of America; and Pattern Makers Association of Los Angeles, are labor organizations affiliated with the American Federation of Labor, and admit to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The parties stipulated that the Company has failed to reply to a request by the CIO to bargain with it as the representative of the Slauson plant employees. During the course of the hearing the Company refused to make any reply to a request by the Blacksmiths to recognize that union as the collective bargaining representative of the forge shop employees in the Vernon plant.

Statements of a Board agent, introduced into evidence at the hearing; indicate that the CIO, the Blacksmiths, and the PMA each represents a substantial number of employees in the units alleged to be appropriate.³

We find that questions affecting commerce have 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 Company and the CIO, in substantial agreement, seek a unit of all production and maintenance employees in the Slauson plant, excluding office clerical employees, office janitorial employees, time-

³The Field Examiner reported that the CIO submitted 144 application cards, all of which bore apparently genuine original signatures; that the names of 140 persons appearing on the cards were listed on the Company's pay roll of August 23, 1943, which contained the names of 355 employees in the unit sought; and that the cards were dated between July 1942 and August 1943.

The Blacksmiths submitted 14 authorization cards, 13 of which bore apparently genuine original signatures. The names of 10 persons appearing on the cards were listed on the Company's pay roll of September 6, 1943, which contained the names of 25 employees in the appropriate unit. Seven of the cards were dated August 1943 and 7 were undated.

PMA submitted 13 authorization cards dated in September 1943, all of which bore apparently genuine original signatures. Of the cards, 12 bore the names of persons on the Company's pay roll of September 25, 1943, which listed 13 employees within the allegedly appropriate unit.

IAM submitted certain evidence in support of its claims which consist of (a) a list of 17 names sworn to on September 24, 1943, as being members of the IAM, and (b) 234 authorization cards dated variously between August 1941 and September 1943. Of the cards submitted 223 bore apparently genuine original signatures. Only 4 cards bore the names of persons within the unit claimed to be appropriate by the CIO, which embraces a total of 355 employees in the Slauson plant. Within the unit of approximately 975 persons employed in the Slauson and Vernon plants, which the IAM alleges is appropriate, 136 individuals have apparently authorized the IAM to bargain for them.

The Warehousemen submitted 11 authorization cards, which although purporting to be IAM cards, are claimed to be authorizations on behalf of the Warehousemen. All cards bore apparently genuine original signatures and were dated between November 1942 and September 1943. Five of the cards bore the names of persons listed on the Company's pay roll, all in the Vernon plants. The pay rolls of the Vernon plants list 58 employees, and the Slauson plant's pay roll lists 33 employees within the unit alleged by the Warehousemen to be appropriate.

keepers, plant guards, and executive, administrative, and professional employees. The IAM seeks, essentially, a production and maintenance unit, embracing the two Vernon plants as well as the Slauson plant but excluding therefrom the units sought by the other A. F. of L. affiliates. The record establishes that aside from corporate ownership there is little connection between the three plants. One of the two Vernon plants, which are contiguous, produces oil well tools and some munitions, while the other is devoted exclusively to the production of munitions. The Slauson plant manufactures centrifugal pumps. The plants operate independently of each other, each having separate managerial personnel, pay rolls, pay days, bonus plans, and identification badges which do not admit employees of one plant into any of the other plants. Interchange or transfer of employees among the plants is extremely limited. There are, however, some facilities which the plants use in common, e. g., a central employment office, a single office which makes up pay-roll checks for all plants, and a forge shop at one of the Vernon plants which also performs certain heat-treatment operations for the Slauson plant. Under these circumstances either a single or multiple plant unit might be indicated.

An examination of the showing of representation made by the CIO and the IAM⁴ persuades us that a single plant unit is appropriate at the present time. It is evident that the CIO has confined its organizational activities to the Slauson plant⁵ where it has apparently organized 39 percent of the employees in the unit it claims to be appropriate. On the other hand, the IAM's attempt to organize on a company-wide basis has been almost wholly unsuccessful at the Slauson plant.⁶ The unit which the IAM seeks is so different from the CIO's that in effect the IAM's intervention should be treated as a petition. It is obvious that a petition supported by such a poor showing of representation as herein made by the IAM would not be entertained by us;⁷ nor, under the facts of this case, should the claims of the IAM be given any greater consideration merely because they appear in the form of an intervention rather than a petition.⁸ Accordingly, we find that the single plant unit of Slauson employees rather than a unit including the employees of all three plants, is appropriate.⁹

⁴ See footnote 3, *supra*.

⁵ A few cards which the CIO submitted on behalf of Vernon employees were withdrawn

⁶ The IAM represents less than 14 percent of the production and maintenance employees on an over-all basis and only 1 percent in the Slauson plant.

⁷ See *Matter of Aluminum Company of America*, 44 N. L. R. B. 1111; *Matter of Public Service Company of Indiana, Inc.*, 42 N. L. R. B. 639; and *Matter of American Manufacturing Co.*, 41 N. L. R. B. 995.

⁸ On September 1, 1943, the IAM filed a petition covering employees of the Vernon plants only. This petition was withdrawn 2 weeks later.

⁹ However, since the IAM has made a showing in the Slauson plant we shall accord it a place on the ballot.

The unit sought by the Warehousemen consists of all truck drivers and warehousemen in all three of the Company's plants, including stockroom clerks, shipping and receiving clerks, and dispatchers. The Company and the CIO contend that such a unit is not appropriate. The Warehousemen's showing of representation in the unit it seeks is only 5 percent, and it makes no showing whatever in the Slauson plant. This showing does not warrant the holding of an election in the Vernon plants among the employees the Warehousemen seeks to represent. Moreover, since there is no evidence to indicate that any employees in the Slauson plant desire a separate unit such as the Warehousemen requests, we see no reason to exclude the employees over whom it asserts jurisdiction from the general production and maintenance unit.

Another point of contention among the parties with respect to the production and maintenance unit in the Slauson plant arises over the inclusion of leadmen in the unit. The CIO argues for their exclusion as supervisory employees, whereas all other parties contend for their inclusion. There is a leadman over each appropriate group of machines or operations who has from 3 to 25 employees under him. Leadmen do not hire or discharge employees, or recommend such action, nor do they even possess authority to discipline or transfer employees. They are under no duty to make reports concerning the employees under them. They express opinions to foremen with respect to the men under them only when asked to do so. Some leadmen perform a large amount of manual labor and some little. The Company contends that leadmen are instructors who help to train new employees and to improve old ones. Leadmen receive from 5 to 10 cents an hour more than the men under them, but a leadman in one department may not receive more than a rank-and-file employee in a different department which has a higher wage scale. Leadmen are not consulted on matters relating to wage increases for the employees under them. Since the record shows that little, if any, real weight is given to their recommendations or opinions, we shall include them in the appropriate unit.

At its Slauson plant, the Company maintains a separate building devoted exclusively to pattern making, employing therein, and under the supervision of a pattern shop foreman, all pattern makers, learners, and storage employees. The PMA contends that the employees of the pattern shop constitute a separate appropriate unit. The CIO contends that about half of the employees of the pattern shop are learners whose wage rates and skills are comparable to the unskilled production and maintenance employees in the main plant. The CIO likewise contends that storage employees are not part of any pattern makers' unit. The PMA considers storing of patterns

to be the initial step in learning the trade of pattern making and therefore takes storage employees into its membership. The Company also considers the storage employees as part of the pattern shop. Although the PMA does not have an agreement with the Company covering the pattern shop, it has settled grievances for these employees and the Company has hired pattern makers through that organization. Under all the circumstances we are of the opinion that the pattern shop employees may properly constitute a separate bargaining unit or may equally achieve the full benefit of their right to self-organization and collective bargaining as part of a plant-wide unit. In this situation we shall permit the scope of the bargaining unit or units to be determined in part by the desires of the employees themselves to be expressed in a separate election.

As indicated above, the Company operates a forge shop in one of the Vernon plants, called Vernon No. 1. The forge shop is housed in a separate building wherein are employed about 25 blacksmiths, blacksmiths' helpers, heat treaters and helpers, and hammer drivers, all of whom are sought by the Blacksmiths as a separate unit. Separate supervision is maintained over the forge shop, and the employees thereof are paid wage rates different from those of the other employees in the plant. This unit is opposed by both the Company and the CIO, who contend that only an industrial unit is appropriate. In view of the fact that there is no prior history of collective bargaining in this plant and the further fact that the petitioning union limits its membership to the unit herein requested, and is the only organization to organize effectively in that group, we shall not deny the benefits of the Act to these employees until the entire plant is organized, but shall permit them to select a bargaining representative forthwith. The record indicates that there are 2 supervisory employees in the forge shop, *viz*, a blacksmith foreman and a heat treating foreman. The blacksmith foreman is in charge of the blacksmiths and hammer drivers, and in turn answers to the superintendent in charge of both the forge and machine shops. Heat treaters are under a separate foreman who takes his orders from the metallurgical laboratory supervisor. Since it appears that these foremen are higher in the supervisory hierarchy than the leadmen, previously discussed, we shall exclude them from the unit.

We find that all blacksmiths, blacksmiths' helpers, heat treaters, heat treaters' helpers, and hammer drivers, employed in the forge shop of the Company's Vernon plant No. 1, but excluding the blacksmith foreman, the heat treating foreman, and any other 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 purposes

of collective bargaining within the meaning of Section 9 (b) of the Act.

In addition to the election which we shall direct in the blacksmiths' unit, on the basis of the entire record, and in accordance with the foregoing, we shall direct elections among the employees of the Company within the groups described below :

(1) All production and maintenance employees in the Company's Slauson plant, including leadmen, but excluding office clerical employees, office janitorial employees, timekeepers, employees in the pattern shop, plant guards, and executive, administrative, 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, to determine whether they desire to be represented by the CIO or the IAM, for the purposes of collective bargaining, or by neither.

(2) All employees in the pattern shop at the Company's Slauson plant, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the CIO or by the PMA, for the purposes of collective bargaining.

As stated above there will be no final determination of the appropriate unit or units with respect to the Slauson plant voting groups, pending the results of the election. If the CIO receives a majority of the votes cast in the respective voting groups, employees in said groups will, together, constitute a single appropriate unit.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate unit at the Vernon plant and among the employees in the aforesaid groups at the Slauson plant 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 ELECTIONS

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Byron Jackson Co., Los Angeles, California, separate elections 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 Twenty-first 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 following groups of employees, 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 any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election :

(1) All production and maintenance employees in the Company's Slauson plant, including leadmen, but excluding office clerical employees, office janitorial employees, timekeepers, employees of the pattern shop, plant guards, and executive, administrative, 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, to determine whether they desire to be represented by the Western Mechanics, Local 700, IUMMSWA (CIO), or by the International Association of Machinists, Lodge 311, A. F. L., for the purposes of collective bargaining, or by neither ;

(2) All employees of the pattern shop at the Company's Slauson plant, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the Western Mechanics, Local 700, IUMMSWA (CIO), or by the Pattern Makers Association of Los Angeles, A. F. L., for the purposes of collective bargaining, or by neither ;

(3) All blacksmiths, blacksmiths' helpers, heat treaters, heat treaters' helpers, and hammer drivers employed in the forge shop of the Company's Vernon plant No. 1, but excluding the blacksmith foreman, heat treating foreman, and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether or not they desire to be represented by the International Brotherhood Blacksmiths, Drop Forgers & Helpers, A. F. L., for the purposes of collective bargaining.