

In the Matter of SOUTHERN PRISON COMPANY AND SOUTHERN STEEL COMPANY *and* INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, SHOPMEN'S LOCAL 583

*Case No. 16-R-742.—Decided November 13, 1943*

*Messrs. J. C. Hall and Arley V. Knight*, both of San Antonio, Tex., for the Company.

*Messrs. John Peace and R. E. Swayze*, both of San Antonio, Tex., for the Union.

*Mr. David V. Easton*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 583, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Southern Prison Company and Southern Steel Company, San Antonio, Texas, herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Bliss Daffan, Trial Examiner. Said hearing was held at San Antonio, Texas, on October 13 and 14, 1943. The Companies and the Union 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

Southern Prison Company and Southern Steel Company, both Texas corporations, are principally engaged at the present time in the manufacture of critical war materials for the United States Army.

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In the course and conduct of their business, the Companies receive substantial amounts of raw materials from points outside the State of Texas; they also ship substantial percentages of their finished products to points outside the State of Texas.<sup>1</sup> The Companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 583, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Companies refuse to recognize the Union as the exclusive bargaining representative of their employees until the Union has demonstrated its majority status by means of an election.

Statements of the Field Examiner, introduced into evidence both at and subsequent to the hearing, indicate that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Union seeks to represent a unit consisting of all production and maintenance employees of the Companies with the exception of clerical, technical, and supervisory employees. The Companies, while

<sup>1</sup> In a prior proceeding, the record disclosed that the Southern Prison Company is normally engaged in the manufacture, sale, distribution, and installation of iron and steel prison and jail equipment, and that the Southern Steel Company is normally engaged in the manufacture, sale, distribution, and installation of tanks, butane systems, and other steel and iron equipment. It was admitted in that proceeding that the Companies are subject to the Board's jurisdiction. See *Matter of Southern Prison Company*, 46 N. L. R. B. 1268.

<sup>2</sup> The Field Examiner originally reported that the Union submitted 82 designation cards bearing apparently genuine and original signatures; that because he could not obtain a pay roll of the Companies he was unable to check said designations and to ascertain how many of the names appearing on the designations also appeared on the Companies' pay roll.

Subsequent to the hearing, the Field Examiner, having obtained a pay roll of the Companies, prepared a second statement, which was introduced into evidence. In this statement he reported that the Union submitted a total of 96 designation cards, of which 73 bore the apparently genuine original signatures of persons whose names appeared upon the Companies' pay roll of October 2, 1943; and that said pay roll contained a total of 178 names of persons engaged within the unit hereinafter found appropriate. We find that the above showing is substantial. See *Matter of Remington-Rand, Inc.*, 40 N. L. R. B. 1100, Cf. *Matter of Semon Bache & Co.*, 39 N. L. R. B. 1216

agreeing substantially to the foregoing unit, contend that maintenance employees are not properly included within said unit.

*Maintenance employees:* The Companies employ four individuals whom they designate as maintenance employees. These persons are engaged in the maintenance of the Companies' machinery, lights, and equipment throughout the plant, and are responsible to the shop superintendent. One of them is called the chief maintenance man and the remaining three work under his direction and supervision. Although he performs substantially the same amount of physical labor as the other maintenance employees, the chief maintenance man possesses the power to make recommendations with respect to the hiring and discharge of those working under his supervision. In accordance with our usual practice, we shall exclude the chief maintenance man from the unit hereinafter found appropriate. However, in accordance with our usual policy, we shall include the remaining maintenance employees within the unit hereinafter found appropriate.

We find that all production and maintenance employees of the Companies, excluding clerical and technical employees, the chief maintenance men, and all other supervisory employees who have the power 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.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot. The companies object to the inclusion within the unit of employees whom they characterized at the hearing herein as transients. They contend that these employees have no intention of becoming regular employees, and lack sufficient interest to warrant their inclusion within the unit; they, therefore, argue that eligibility to vote in the election should be limited to those employees who have been engaged by the Companies for a period of at least 6 months. The record discloses that the Companies have a high turnover in personnel and that in order to maintain production, they employ whatever labor is available, without any apparent recourse to seniority or other rules. However, all employees engaged by the Companies are hired on a permanent basis, and no distinction is made, either on the pay roll or elsewhere, between the alleged transients and the so-called regular employees. Under these circumstances, we are of the opinion that the position taken by the Companies is untenable.<sup>3</sup> In accordance with our usual practice, we

<sup>3</sup> See *Matter of Bisbee Linseed Company*, 34 N. L. R. B. 272. Cf. *Matter of Nevada-California Electric Corporation*, 20 N. L. R. B. 79.

shall direct that an election be held among those 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 2, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Southern Prison Company and Southern Steel Company, San Antonio, 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 or not they desire to be represented by International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 583, affiliated with the American Federation of Labor, for the purposes of collective bargaining.