

In the Matter of JOHNSTON BROTHERS, INC. and LOCAL #833, UNITED
AUTOMOBILE WORKERS OF AMERICA, AFFILIATED WITH THE AMERICAN
FEDERATION OF LABOR

Case No. 7-R-1575.—Decided December 6, 1943

Messrs. Leo C. Lillie and James H. Johnston, of Grand Haven, Mich., for the Company.

Mr. Edward T. Donahue, of Lansing, Mich., and *Mr. Anthony Schippers*, of Ferrysburg, Mich., for the AFL.

Mr. Joseph Gritter, of Grand Rapids, Mich., and *Mr. Derk DeWitt*, of Ferrysburg, Mich., for the CLA.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local #833, United Automobile Workers of America, affiliated with the American Federation of Labor, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Johnston Brothers Inc.,¹ Ferrysburg, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Sylvester J. Pheney, Trial Examiner. Said hearing was held at Grand Haven, Michigan, on October 26, 1943. The Company, the AFL, and United Boiler Makers, Local 101, affiliated with the Christian Labor Association of the United States, herein called the CLA, 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.

¹ At the hearing, all pleadings were amended to correspond with this, the correct corporate name. The CLA's objection to this amendment was correctly overruled by the Trial Examiner as no one was prejudiced by correction of the misnomer.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Johnston Brothers, Inc., a Michigan corporation, owns and operates a plant at Ferrysburg, Michigan, where it is engaged in the manufacture of steel heating and power boilers. During the first 8 months of 1943, the Company used approximately \$112,650 worth of carbon steel, 95 percent of which was shipped to the Ferrysburg, Michigan, plant from points outside the State of Michigan. The approximate value of the finished products shipped by the Company, for the first 8 months of 1943, was \$283,000, of which approximately 98 percent was shipped to points outside the State of Michigan.

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

II. THE ORGANIZATIONS INVOLVED

Local #833, United Automobile Workers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

United Boiler Makers, Local 101, affiliated with the Christian Labor Association of the United States, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Contractual relations between the Company and the CLA began in October 1941. On October 13, 1942, these parties executed a new contract for the term of one year, extendible for yearly periods by a 30-day automatic renewal clause. On September 8, the AFL by letter requested recognition as the exclusive bargaining representative of the Company's employees. The Company refused recognition on the ground that it was bound by the CLA contract and thereafter, on September 15, 1943, the AFL filed its petition in this matter. The Company and the CLA contend that since the petition was filed after the automatic renewal date of their contract, the contract is a bar to a determination of representatives. There is no merit in this contention. The letter of September 8, which was received by the Company prior to the automatic renewal date, was sufficient to apprise the Company of the claims of the AFL and prevent the creation of a bar to the determination of those claims by the Company's making or renewing a contract with another labor organization.

A statement of the Acting Regional Director, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.²

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 unit requested by the AFL is substantially the same as that covered by the CLA's contract, that is, all production and maintenance³ employees, excluding office employees and supervisors. All parties agree as to the appropriateness of this basic unit. There is disagreement, however, concerning the status in the unit of the following three employees of the Company whom the AFL would exclude and the Company and the CLA would include:

Boerma: The AFL contends that Boerma is a supervisor. He is an experienced employee, employed at an hourly rate who carries the title of assistant foreman. In the absence of the foreman, he takes over most of the duties of the foreman and receives an extra dollar a day for doing so. When not acting as foreman, he does the same work as all other production workers. By reason of his skill and experience, he earns more than do the others. He regularly has one and sometimes two helpers who work in conjunction with him and complement his work. His direction of these helpers, however, is not such as to warrant the conclusion that he is a supervisor,⁴ nor does his occasional substitution as foreman place him in that category. He has served in that capacity only about 2½ days in the past 6 months, and when he is so acting, he has neither the foreman's authority to change the status of employees or even to recommend such action, nor all of the foreman's duties and responsibilities. Whereas the foreman is cognizant of an all-over plan and arranges his week's work accordingly, Boerma, when he acts as foreman, supervises only the completion of a day's work that is outlined for him by the general manager. We shall include Boerma in the unit.

² The Acting Regional Director reported that the AFL submitted 29 authorization cards, all of which bore apparently genuine original signatures; that the names of 28 persons appearing on the cards were listed on the Company's pay roll of September 15, 1943, which contained the names of 52 employees in the appropriate unit; that the cards were dated in August and September 1943. Witnesses for the Company and CLA testified that at the time of the hearing 26 of the employees of the Company allowed a voluntary dues check-off to the CLA.

³ The AFL also asked for inclusion of non-productive employees but admitted that there are no non-productive employees employed by the Company other than maintenance employees.

⁴ See *Matter of Victor Chemical Company*, 52 N. L. R. B. 194; *Matter of United States Smelting, Refining & Mining Co.*, 53 N. L. R. B. 84.

Peterson: The AFL classifies Peterson as a timekeeper and would exclude him from the unit. The Company and CLA classify him as a regular production worker. Peterson is a former office worker whose office job was recently taken over by a woman. He is now working 9½ hours a day in the shop as a helper, obtaining a general knowledge of all the machinery in the plant for the purpose of qualifying himself to act as assistant lay-out for the Company. The assistant lay-out man presently employed by the Company is included in the unit. For the last half hour of the working day, Peterson makes a record of how much time each man has spent on each job that day. This record is turned over to the office to be used in computing costs. In our opinion, this clerical activity, which takes so little of Peterson's time, does not differentiate him from the production employees. Accordingly, we shall include him in the unit.

Haystad until the beginning of the war was an independent welder. He was hired by the Company on an hourly basis with the understanding that he would be given a reasonable amount of time off to do odd jobs for his old customers. The AFL contends that Haystad is an industrial contractor and should be excluded from the unit. The Company and the CLA insist that he is a regular production employee. We agree with the latter contention. When Haystad is in the shop, he is under the same supervision and is paid on the same basis as all other boilermakers. His one privilege is time off and this is conditioned upon the company's requirements—if the Company needs his services, he neglects his own customers. We shall include Haystad in the unit.

We find that all production and maintenance employees of the Company, including Boerma, Peterson, and Haystad, but excluding office employees, foremen, assistant foremen, superintendents 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.

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.

At the hearing the parties discussed the eligibility to vote of number of persons who, at the time of the hearing, had been absent from

work for varying lengths of time because of illness, and also of one person who desires to leave the employ of the Company and has requested a statement of availability but has the Company's permission to return to its service if he wishes. Since our usual policy as set forth in the Direction covers all of these cases, we do not believe it necessary to rule specifically on the individual employees involved.

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 Johnston Brothers, Inc., Ferrysburg, Michigan, 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 Seventh 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 Local #833, United Automobile Workers of America, affiliated with the American Federation of Labor, or by United Boiler Makers, Local 101, affiliated with the Christian Labor Association of the United States, for the purposes of collective bargaining, or by neither.