In the Matter of THE MISSOURI VALLEY BRIDGE AND IRON CO. (SHIPBUILDING DIVISION), A JOINT VENTURE, COMPOSED OF THE MISSOURI VALLEY BRIDGE AND IRON CO., WINSTON BROS. COMPANY, C. F. HAGLIN AND SONS, INC., BECHTEL-MCCONE-PARSONS CORP., AND SOLLITT CONSTRUCTION COMPANY, INC. *and* FEDERAL UNION NO. 23509 AMERICAN FEDERATION OF LABOR

Case No. 14-R-800.—Decided December 7, 1943

Waller, McGinnis & Clippinger, by *Mr. E. C. Clippinger*, and *Mr. W. J. Rohan*, of Evansville, Ind., for the Company.

Mr. T. N. Taylor, of Evansville, Ind., for the Union.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by Federal Union No. 23509 American Federation of Labor, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Missouri Valley Bridge and Iron Co. (Shipbuilding Division), a Joint Venture, composed of The Missouri Valley Bridge and Iron Co., Winston Bros. Company, C. F. Haglin and Sons, Inc., Bechtel-McCone-Parsons Corp., and Sollitt Construction Company, Inc., Evansville, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harry G. Carlson, Trial Examiner. Said hearing was held at Evansville, Indiana, on November 11, 1943. The Company 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. At the commencement of the hearing, the Company filed a motion to dismiss the petition on the grounds that the Company is not engaged in commerce within the meaning of the National Labor Relations Act, that a unit of plant-protection employees is not an appropriate unit within the meaning of the Act, and that guards and firemen should not

be included in the same unit since their duties are wholly different. The Company also filed a motion for separate consideration as to guards and firemen on the grounds that the two groups receive substantially different training, and that the duties of both are entirely distinct and separate. The Trial Examiner reserved rulings on the motions for the Board. For reasons hereinafter set forth the motions are hereby denied. All parties were afforded opportunity to file briefs with the Board.

Subsequent to the hearing, the Company filed a motion to reopen the hearing and permit the introduction of additional evidence. The motion stated, in part, that a majority of the firemen were to be demilitarized, as set forth in a copy of a letter from the chief of the plant-protection force to the Naval Supervisor of Shipbuilding, attached to and made part of said motion. The contents of said letter are hereby made part of the record; the motion for rehearing is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Missouri Valley Bridge and Iron Co. (Shipbuilding Division), a Joint Venture, composed of The Missouri Valley Bridge and Iron Co., Winston Bros. Company, C. F. Haglin and Sons, Inc., Bechtel-McCone-Parsons Corp., and Sollitt Construction Company, Inc., has its principal office and place of business in Evansville, Indiana, where it is engaged in the construction of ships and tank landing craft for the United States Navy. It is also engaged in some repair work on ships for the United States Navy. Approximately 95 percent of the materials used in construction is shipped to the Company from points outside the State of Indiana. When the ships are constructed, the Company delivers them to the United States Navy.[1] We find, contrary to the contention of the Company, that the Company is engaged in commerce within the meaning of the Act.[2]

II. THE ORGANIZATION INVOLVED

Federal Union No. 23509 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

[1] The Company in its motion to reopen the hearing offered to adduce additional evidence with respect to the course taken by the ships in trial runs conducted by the Company prior to their delivery to the United States Navy. However, as indicated above by our denial of the Company's motion to reopen, such evidence, if adduced, would be immaterial to the jurisdictional issue involved herein.

[2] See *Matter of Los Angeles Shipbuilding & Dry Dock Co*, 40 N L R. B. 1150; *Matter of Pennsylvania Shipyards, Inc*, 40 N. L. R B 1300; *Matter of Bethlehem Steel Company, Shipbuilding Division*, 46 N. L. R B. 1166.

III. THE QUESTION CONCERNING REPRESENTATION

On August 18, 1943, the Union orally, and on September 30, 1943, in writing, notified the Company that it represented a majority of the Company's plant-protection employees, and requested a bargaining conference. The Company refused to recognize the Union until certified by the Board.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit it claims to be appropriate.[3]

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 UNITS

The Union contends that all plant-protection employees of the Company excluding supervisory employees constitute an appropriate unit. Both guards and firemen were militarized at the time of the hearing. The Company contends that plant-protection employees should not constitute an appropriate unit because they are subject to military supervision as members of the United States Coast Guard; and further that guards and firemen, because of the difference in their duties, should not be included within the unit. We have heretofore found similar contentions to be without merit.[4] However, it appears that a large number of firemen are to be demilitarized in the near future pursuant to an order of the Commandant for the Ninth Naval District; the remaining firemen will be transferred to the guard force as guards. In accordance with our policy enunciated in the *Dravo Corporation* case [5] we find that non-militarized firemen are not properly included within a unit of militarized guards. We shall, therefore, establish a bargaining unit for all militarized guards separate and apart from the non-militarized firemen. All firemen who may remain militarized shall be deemed to fall within the meaning of the term, militarized guards, as used in our unit description. There remains for consideration a question as to the supervisory status of the following employees.[6]

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[3] The Regional Director reported that the Union submitted designations bearing apparently genuine original signatures of over 50 percent of the guards and firemen on the Company's pay roll.

[4] See *Matter of Aluminum Company of America*, 50 N L R B 233; *Matter of Firestone Tire & Rubber Company of California*, 50 N. L. R. B. 524; *Matter of Tampa Shipbuilding Company, Inc*, 50 N L R. B 177; *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881.

[5] See footnote 4, *supra*

[6] It is clear that the chief of the entire plant protection force, R A. Burns, the assistant chiefs of guards and firemen, lieutenants of the guards, and captains of the firemen, are supervisory employees, and shall, therefore, be excluded.

Lieutenants: The Company employs five lieutenants in the fire-protection force, two to each shift, who are responsible to and receive orders from the captains, of whom there is one on each of the three shifts. The lieutenants direct crews of firemen, and it appears that the lieutenants have the authority to make recommendations affecting the status of the members of their crews. We conclude that the lieutenants are supervisory employees. The title of lieutenant will undoubtedly, upon demilitarization of the firemen, be replaced by a similar non-militarized classification. We shall, therefore, exclude such classification from the unit of non-militarized firemen.

Sergeants: The Company employs on each of the three shifts five sergeants in the guard force to cover a particular area. They are responsible to and receive their orders from the lieutenants, of whom there are two on each shift. The sergeants are responsible for certain areas to which are assigned the number of patrolmen necessary to protect that area. They are held responsible for the effectuation of orders in that area and for the proper handling of the posts by the men assigned thereto. It appears that the sergeants receive the same rate of pay as do the lieutenants in the fire-protection force, and like such lieutenants, they have the authority to make recommendations affecting the status of the members of their crews. We conclude that sergeants are supervisory employees, and we shall, accordingly, exclude them from the unit of militarized guards.

We find that (1) all militarized guards of the Company excluding the chief, the assistant chief, lieutenants, and sergeants and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action; and (2) all non-militarized firemen of the Company excluding the assistant chief, the non-militarized classifications equivalent to those of captain and lieutenant, and all 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 appropriate units 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 elections by secret ballot among the employees in the appropriate units who were employed during the payroll period immediately preceding the date of our Direction of Elections, subject to the limitations and additions set forth therein.

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 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 The Missouri Valley Bridge and Iron Co. (Shipbuilding Division), a Joint Venture, composed of The Missouri Valley Bridge and Iron Co., Winston Bros. Company, C. F. Haglin and Sons, Inc., Bechtel-McCone-Parsons Corp., and Sollitt Construction Company, Inc., Evansville, Indiana, 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 Fourteenth 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 units 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 elections, to determine whether or not they desire to be represented by Federal Union No. 23509 American Federation of Labor, for the purposes of collective bargaining.

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