

In the Matter of MACCLATCHIE MANUFACTURING COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 311, A. F. OF L.

*Case No. 21-R-2169.—Decided December 10, 1943*

*Mr. Robert M. McManigal*, of Los Angeles, Calif., for the Company.

*Mr. David Sokol*, of Los Angeles, Calif., for the I. A. M.

*Messrs. John Despol and Fred S. Hart*, of Maywood, Calif., for the U. S. A.

*Mr. Louis Cokin*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, Lodge 311, A. F. of L., herein called the I. A. M., alleging that a question affecting commerce had arisen concerning the representation of employees of MacClatchie Manufacturing Company, Compton, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. Said hearing was held at Los Angeles, California, on November 4, 1943. At the commencement of the hearing the Trial Examiner granted a motion of MacClatchie Division of Local 2018, United Steelworkers of America, C. I. O., herein called the U. S. A., to intervene. The Company, the I. A. M., and the U. S. A., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the U. S. A. moved to dismiss the petition. The Trial Examiner reserved ruling. The motion is hereby denied. 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:

53 N. L. R. B., No. 231.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

MacClatchie Manufacturing Company is a California corporation operating a plant at Compton, California, where it is engaged in the manufacture of oil well equipment and steel and rubber products. During the 12-month period ending November 1, 1943, the Company purchased raw materials valued at about \$75,000, approximately 75 percent of which was shipped to it from points outside the State of California. During the same period the Company sold products valued at about \$450,000, approximately 20 percent of which was shipped to points outside the State of California.

## II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Lodge 311, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

MacClatchie Division of Local 2018, United Steelworkers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On October 13, 1943, the I. A. M. requested the Company to recognize it as exclusive collective bargaining representative of the Company's employees. The Company refused this request.

On May 5, 1941, the Company and the U. S. A. entered into an exclusive collective bargaining contract. The contract provided that it was subject to renegotiation on 30 days' written notice and if "not changed by written agreement entered into by and between the Company and the Union within sixty (60) days from the giving of notice, then this agreement and provisions thereof may be terminated by either party upon ten (10) days' written notice." During July 1942, the U. S. A. and the Company opened the contract for negotiations and in December 1942 the issues under negotiation were certified to the National War Labor Board. The dispute was submitted to an arbitrator who thereafter rendered an award. On November 4, 1943, the Tenth Regional War Labor Board issued a directive order,<sup>1</sup> which adopted the award of the arbitrator. It appears that the Company and the U. S. A. entered into a contract on November 18, 1943, which incorporated the clauses recommended by the arbi-

<sup>1</sup> A copy of the directive order, submitted by the U. S. A. on or about November 19, 1943, is hereby made a part of the record.

trator and adopted by the Regional War Labor Board.<sup>2</sup> The contract permits either party to open negotiations upon 20 days' notice and it is terminable upon 10 days' written notice if a new written agreement is not reached within 40 days after the giving of notice of desire to negotiate.

The U. S. A. urges that we dismiss the petition of the I. A. M., because to do otherwise would assertedly serve to penalize the U. S. A. for having submitted its dispute to the National War Labor Board for orderly determination. In substance, it ascribes the apparent desire of the employees for an election to the dissatisfaction among them over the alleged delay in the determination of the contractual dispute. The record shows that the U. S. A. was in full enjoyment of its rights as the exclusive collective bargaining representative from May 1941 to July 1942.<sup>3</sup> While the disputed matters were pending before the Regional War Labor Board, the parties operated under the May 1941 agreement. Thus the U. S. A. has enjoyed the rights of an exclusive representative for about 4 years and the employees it represented received the benefits of the May 1941 contract for more than a year without any request for a change in terms, although the contract was subject to renegotiation upon 30 days' notice. This case, therefore, is clearly not comparable to those recent cases<sup>4</sup> in which we declined to hold an election because the recognized or certified representative had had no real opportunity to enjoy the benefits of exclusive representation, inasmuch as the initial collective bargaining efforts, following recognition or certification, had resulted in resort to the processes of the National War Labor Board. We find, therefore, that no reason appears for refraining from ordering an election at this time.<sup>5</sup>

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the I. A. M. and the U. S. A. each represent a substantial number of employees in the unit herein-after found to be appropriate.<sup>6</sup>

<sup>2</sup> We hereby make a part of the record a copy of the contract lodged with the Board by the U. S. A. on or about December 2, 1943.

<sup>3</sup> In fact, the U. S. A. or its predecessor, was the representative of the Company's employees for about 2 years prior to 1941, as a result of having won an election conducted by the Board. In October 1939, the Company and the predecessor of the U. S. A. entered into a contract, which was succeeded by the May 1941 agreement.

<sup>4</sup> *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593; *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; *Matter of Kennecott Copper Corporation, Nevada Mines Branch*, 51 N. L. R. B. 1140.

<sup>5</sup> Since the November 1943 contract was executed after the I. A. M. had given notice of its claim, and since it is subject to termination by either party within 60 days, it obviously is not a bar to a present determination of representatives.

<sup>6</sup> The Field Examiner reported that the I. A. M. and the U. S. A. presented 35 and 45 membership application cards, respectively, bearing apparently genuine signatures of persons whose names appear on the Company's pay roll of October 15, 1943. There are approximately 68 employees in the appropriate unit.

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 National Labor Relations Act.

#### IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all production and maintenance employees of the Company, excluding office and clerical employees, warehousemen, and all supervisory employees with authority to hire, promote, discipline, discharge, 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 means of an election by secret ballot among the employees within the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election here, 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 3, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with MacClatchie Manufacturing Company, Compton, California, 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 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 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

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<sup>7</sup> This is substantially the same unit that is provided for in the contract between the Company and the U. S. A.

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, to determine whether they desire to be represented by International Association of Machinists, Lodge 311, affiliated with the American Federation of Labor, or by MacClatchie Division of Local 2018, United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.

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