

In the Matter of CHICAGO BRIDGE & IRON COMPANY *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, AFL

Case No. 10-R-1026.—Decided December 17, 1943

Mr. H. A. McWhorter, of Birmingham, Ala., and *Mr. Walker B. Davis*, of Chicago, Ill., for the Company.

Mr. William E. Allison and *Mr. M. Wright*, of Birmingham, Ala., for the Brotherhood.

Mr. L. C. Brice and *Mr. W. E. Drummond*, of Birmingham, Ala., for the Independent.

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, affiliated with the A. F. of L., herein called the Brotherhood, alleging that a question affecting commerce had arisen concerning the representation of employees of Chicago Bridge & Iron Company, Birmingham, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles W. Schneider, Trial Examiner. Said hearing was held at Birmingham, Alabama, on November 8, 1943. The Company, the Brotherhood, and the Employees' Union of Chicago Bridge & Iron Company, herein called the Independent, 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 opportunity to file briefs with the Board.

53 N. L. R. B., No. 251.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Chicago Bridge & Iron Company is an Illinois corporation engaged in the design, fabrication, and erection of steel plate work. It operates plants at Birmingham, Alabama; Greenville, Pennsylvania; and Chicago, Illinois. The plant at Birmingham, Alabama, is the only one involved herein. The Company purchases annually raw materials valued in excess of \$1,000,000 for use at the Birmingham plant, 30 percent of which is secured from sources outside the State of Alabama. Approximately 90 percent of the finished products of the Birmingham plant is shipped to points outside the State of Alabama. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, affiliated with the American Federation of Labor, and The Employees' Union of Chicago Bridge & Iron Company, unaffiliated, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 9, 1943, the Brotherhood requested recognition as the exclusive bargaining representative of the Company's production and maintenance employees; on September 15, 1943, the Company declined to accord such recognition.

In July 1937, after a card check conducted under the supervision of certified public accountants, the Company recognized the Independent as the collective bargaining representative of all the shop employees at the Company's Birmingham plant. From the date of recognition to the present time, the Company and the Independent have met at intervals for the purpose of negotiating grievances and other matters pertaining to labor relations. No collective bargaining agreement, however, has ever been executed by the parties and they do not contend that there is in existence any contract which is a bar to an election at this time.

A statement prepared by a Field Examiner of the Board introduced in evidence at the hearing, indicates that the unions represent a sub-

stantial number of employees in the unit hereinafter found to be appropriate.¹

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 Brotherhood seeks a unit comprised of all production and maintenance employees, including storeroom attendants and helpers, but excluding supervisory employees, foremen, assistant foremen, leadmen, guards and watchmen, office and clerical employees, timekeepers, checkers, inspectors, office janitor, first aid department employees, detail checkers, expeditors, shop clerks, vessel dimension checker, commissary clerks, lunchroom manager, mail carrier, and maintenance and technical engineers. The Independent urges a unit comprised of all shop employees exclusive of supervisory employees; the Company's position in general supports that of the Independent.

The Brotherhood contends that the following employees should be excluded from the unit on the grounds that they are either clerical, technical, supervisory, or managerial employees, whereas the Company² and the Independent contend generally that such employees are non-supervisory and have duties sufficiently related to those of the production and maintenance employees as to warrant their inclusion in the unit.

Clerical: There are approximately 29 clerical employees in various offices attached to the shop. Their duties consist of making out route cards, assembling pressure vessel data reports, making up pay-roll sheets, issuing checks, and keeping personnel records. Since the duties of these employees are clerical in nature and dissimilar to those of production and maintenance employees, we shall, in accordance with our customary policy, exclude them from the unit.

Bonus Clerk: This employee conducts time-studies of machine operations and from such studies establishes incentive rates for production employees. He is under the direct supervision of the plant manager and has directive authority with respect to one clerk. Inasmuch as the bonus clerk possesses authority to affect the status of the clerk under his direction, and assists in the establishment of incentive

¹ The Field Examiner reported that the Brotherhood submitted 289 designations bearing apparently genuine signatures, 244 of which bear the names of persons whose names are on the Company's pay roll of September 26, 1943. The designations were dated as follows: 84 in June, 20 in July, 95 in August, and 44 in September, 1943; 1 was undated.

He further reported that the Independent submitted 470 designations bearing apparently genuine signatures, 309 of which bear names of persons whose names are on the Company's pay roll of September 26, 1943. The designations were dated as follows: 91 in 1937, 3 in 1939, 34 in 1940, 1 in 1941, 3 in 1942, 168 in 1943, and 9 undated. There are approximately 806 employees in the alleged appropriate unit.

² The Company, however, takes no position with respect to commissary clerks, first aiders, guards, lunchroom manager, mail carrier, and maintenance and technical engineers.

rates for production employees, we find that he is not only a supervisory employee, but enjoys a confidential status closely related to management. We shall exclude the bonus clerk from the unit.³

Lunchroom Manager and Commissary Clerks: The Company's commissary is under the supervision of the lunchroom manager. He orders supplies, handles cash, and has authority to hire and discharge four commissary clerks whose duties consist of preparing and serving food to the employees. Inasmuch as the lunchroom manager is a supervisory employee and since his interests and functions as well as those of the commissary clerks, are dissimilar to the interests and functions of production and maintenance employees, we shall exclude both the lunchroom manager and commissary clerks from the unit.

Storeroom Clerks: These two employees work in material storerooms located in the shop. Their duties consist of supplying materials to production employees and keeping a perpetual inventory of such materials. They are assisted in their duties by attendants and helpers but do not possess any supervisory authority with respect to such employees. Since it appears that storeroom clerks have interests more in common with the production employees than those of clerical employees, we shall include them in the unit.

Inspectors and Fabrication Checkers: The Inspectors, of whom there are five, are under the supervision of the chief inspector. They inspect the finished products for defective workmanship, flaws, or other defects. There are two fabrication checkers, also referred to as leaders, who are employed in the weld shop where they check or inspect work in the process of fabrication to see that such work conforms to the blueprints; they are under the supervision of the weld shop foreman. Neither the inspectors nor fabrication checkers have authority to effect changes in the status of any of the shop employees, but merely report defects to their respective superiors, the chief inspector, and the weld shop foreman. Since the functions of these employees are closely related to the production process and since they have no supervisory authority, we shall include them in the unit.⁴

Layer-out Checker: This employee works in the structural shop where he acts as a "layer-out" and checks the work of four other layer-outs; the duty of a layer-out consists of laying out the work on material before such material is processed. The record shows that he has no supervisory authority over the employees under his direction. Since the combining of the layer-out and checking duties suggest a close relationship between the two functions, and since all the parties are agreed that layer-outs should be included in the unit, we shall, accordingly, include the layer-out checker in the unit.

³ See *Matter of Oliver Farm Equipment Company*, 53 N. L. R. B. 1078.

⁴ See *Matter of Gardiner-Denver Company*, 52 N. L. R. B. 1277.

Pressure Vessel Dimension Checker: This employee checks the dimensions of metal vessels which have been fabricated to see that they conform to specifications. He also takes heat numbers of iron plate and reports them to a clerk, who uses the numbers in compiling a record of such information. He is under the supervision of the erection shop foreman and has no supervisory authority. Since the record shows that the greater portion of his duties are similar to those of inspectors and fabrication checkers, discussed above, we shall include him in the unit.

Time Checkers: These seven employees work in designated areas in the shop. Their duties consist of timing production operations, counting pieces, measuring footage of welding, and gathering data used in the establishment of wage rates; they are under the supervision of the shop superintendent. Since it appears that the duties of time checkers are largely clerical in nature, and that they have interests differing from those of ordinary production and maintenance employees, we shall exclude them from the unit.⁵

Leaders: There are approximately 10 leadmen or leaders employed by the Company. Three of the leaders supervise the work of fitting gangs and spend approximately 75 percent of their time working as fitters; each gang consists of a fitter, welder and helper. Although they possess directive authority with respect to welders and helpers, they have no authority to effect changes in the status of those employees. One of the leaders in question was temporarily in charge of a group of welders during the absence of their regular foreman; however, he does not normally possess any supervisory authority. The toolroom leader is under the supervision of the master mechanic and has charge of the toolroom. He has directive authority over 2 employees who assist him but he has no authority to effect changes in their status. However, the record shows that the leader of the chippers and grinders has supervision over 15 to 18 employees and has the authority to effect changes in the status of those employees. The chief clerk in the shop office and the clerk in charge of the time office, similarly, have supervisory authority over approximately 7 clerks. The last 2 of the 10 leaders, also referred to as fabrication checkers, were discussed above. Since the clerical leaders and the leader in charge of the chippers and grinders have authority to effect changes in the status of the employees under their supervision, we shall exclude them from the unit. We find, however, that the other leaders discussed herein do not possess sufficient authority to warrant their exclusion; we shall include them in the unit.

Expediter: This employee is in charge of shipping, supervises the issuance of route cards, and makes available the materials needed for

⁵ See *Matter of Bohn Aluminum Company*, 47 N. L. R. B. 1229; *Bendix Aviation Corporation (Philadelphia Division)*, 53 N. L. R. B., No. 162

operations. He is located in the shop office and is assisted by a clerk and another employee known as a chaser who keeps records; he is under the supervision of the shop superintendent. The record shows that he has authority to make recommendations affecting the status of the two employees under his supervision. We find that the expediter is a supervisory employee, and we shall exclude him from the unit.⁶

Detail Chasers: There are 13 detail chasers scattered throughout various departments. The duties of these employees involve keeping fabricated parts moving along their production route; on occasion they run machines in order to expedite certain materials. They are under the supervision of the foremen or subforemen in their respective departments. Since the duties of the detail chasers appear to be neither clerical nor supervisory and are closely related to the production process, we shall include them in the unit.

Powerhouse Operators: These three employees are in charge of the powerhouse during their respective shifts and are under the supervision of the master mechanic. Their duties consist of operating and repairing the equipment located in the powerhouse. Since their interests and working conditions are similar to those of production and maintenance employees, we shall include them in the unit.

Maintenance and Technical Engineers: The engineers, of whom there are three, are under the supervision of the master mechanic. They are professional employees having duties of a technical nature and possessing interests and functions different from those of the ordinary production and maintenance employees. We shall exclude them from the unit.⁷

Guards: The Company employs seven guards who are armed, uniformed and members of the auxiliary military police. In accordance with our customary policy, we shall exclude the militarized guards from the unit.⁸

Chauffeur: This employee operates an automobile assigned to transport employees to any place they are required to go. He is listed on the shop pay roll, but is under the supervision of the personnel director. It appears that his interests and duties are dissimilar to those of the ordinary production and maintenance employees; we shall exclude him from the unit.

Main Office Janitor: The Company employs five janitors; four work in the shop office, and one works in the main office. The Company and the Independent would include all the janitors in the unit, whereas the Brotherhood would exclude the main office janitor. Since it appears that all the janitors have similar interests and working condi-

⁶ *Matter of St. Johns River Shipbuilding Company*, 52 N. L. R. B. 12.

⁷ *Matter of Boston Edison Company*, 51 N. L. R. B. 118.

⁸ *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

tions which are closely aligned to those of the production and maintenance employees, we shall include all janitors in the unit.

Mail Carrier: This employee delivers mail, drawings, and inter-department communications between the main office and the shop office, and on occasion sweeps out the personnel office; he is under the supervision of the personnel director. Since the greater proportion of his duties are closely related to those of the office clerical employees, we shall exclude him from the unit.

First Aiders: These two employees render first aid to employees, sell safety shoes and goggles, and maintain accident records; they are under the supervision of the director of safety. It appears that their duties and interests differ from those of the maintenance and production employees; we shall exclude first aiders from the unit.

Brice: This person is normally employed as a plate layer-out, although on occasion he has acted as foreman in his department during the absence of the regular foreman. When acting as foreman, Brice continued to do his own work and was paid his regular rate. It appears that the sporadic instances in which this employee has acted as foreman have not affected his status as a regular production employee. Since we have included layer-outs in the appropriate unit, we shall likewise include Brice.

We find that all production and maintenance employees of the Company's Birmingham, Alabama, plant, including storeroom clerks, inspectors, the pressure vessel dimension checker, layer-out checkers, fitting gang leaders, fabrication checkers, toolroom leader, temporary leader in welding department, detail chasers, powerhouse operators, janitors, and Brice, but excluding foremen, subforemen, master mechanic, chief inspector, personnel director, safety director, nurse, clerks other than storeroom clerks, bonus clerk, timecheckers, chippers and grinders leader, two clerical leaders, expediter, technical and maintenance engineers, guards, chauffeurs, mail carrier, first aiders, lunchroom manager, 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 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 payroll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.

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 Chicago Bridge & Iron Company, Birmingham, Alabama, 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 10th 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 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 Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, affiliated with the A. F. of L., or The Employees' Union of Chicago Bridge & Iron Company, (unaffiliated) 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.