

In the Matter of JAMES RUSSELL ENGINEERING WORKS, INC.¹ and
AMERICAN FEDERATION OF LABOR

Case No. 1-R-1611.—Decided December 20, 1943

Mr. Thomas H. Ramsey, of Boston, Mass., for the Board.
Gordon & Gordon, by *Mr. Benjamin E. Gordon*, of Boston, Mass.,
for the Company.

Messrs. Edward A. Raleigh and *Paul M. Hovey*, both of Boston,
Mass., for the AFL.

Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the American Federation of Labor, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of James Russell Engineering Works, Inc., Boston, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel H. Jaffee, Trial Examiner. Said hearing was held at Boston, Massachusetts, on October 26, 1943. The Company and the AFL 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

James Russell Engineering Works, Inc. is a Massachusetts corporation with its principal office and places of business in Boston, Massachusetts. The Company has two yards located about ½ mile apart,

¹ This Decision was originally titled *Matter of James Russell Boiler Works*.

one located on Dewar Street, the other on Freeport Street, in the City of Boston. The Company is engaged in the manufacture of metal products, including barges and other small vessels for the United States Government. The principal raw materials used by the Company in its operations are steel, iron, and stainless steel. During the year 1942, the Company purchased raw materials valued in excess of \$100,000, of which approximately 75 percent was shipped to the Company's yards at Boston from points outside the Commonwealth of Massachusetts. During the same period, the Company sold finished products valued in excess of \$100,000, more than 50 percent of which was shipped from the Company's Boston yards to points outside the Commonwealth of Massachusetts. The Company's business during the year 1943 has been approximately equal to its business for the same period of 1942.

The Company admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

American Federation of Labor is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about September 20, 1943, the AFL requested recognition by the Company as exclusive bargaining representative of the employees of the Company at its Freeport yard. The Company refused to grant such recognition to the AFL, contending that the unit was inappropriate and questioning the AFL's contention that it represents a majority of the employees.

A statement of the 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 parties stipulated that the appropriate unit should consist of all production and maintenance employees, excluding supervisors, foremen, assistant foremen, office and clerical employees, and guards. The Company, however, contends that the appropriate unit should include the employees at both its yards, while the AFL seeks to con-

² The Regional Director reported that the AFL submitted 50 authorization cards bearing apparently genuine signatures of persons listed on the Company's pay roll of September 23, 1943, which contained the names of 77 employees in the appropriate unit.

fine the unit to the employees at the Freeport Street yard. There is also disagreement with respect to two categories of employees, leadmen, and truck drivers, both of which the Company seeks to include in and the AFL to exclude from the unit.

The two yards are approximately $\frac{1}{2}$ mile apart. They are both under the supervision of the Russell brothers, who act jointly as general managers of both yards. The general office is at the Dewar Street yard and all company records, including the pay roll, are kept there. There is one labor relations policy, administered jointly by the Russells. Wages, hours, and working conditions are the same at both plants, and seniority is applied on a company-wide basis. Both yards do essentially the same type of work, though the products under construction at any given time may vary between yards. At the time of the hearing, between 10 and 20 percent of the tonnage of material used at the Freeport Street yard was fabricated at the Dewar Street yard. It is clear, therefore, that a unit including both yards would be appropriate. There are, however, other factors which indicate that at the present time the unit sought by the AFL is appropriate.

On August 3, 1943, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local #29 (AFL), herein called the Boilermakers, filed a petition for investigation and certification, alleging that both of the Company's yards together constituted a single appropriate unit. Thereafter, a consent election was agreed upon by the parties and arrangements were made by the Board's Regional Director to conduct such an election. Before the election was held, however, the Boilermakers withdrew its petition. Thereafter on September 20, 1943, the AFL filed the petition here involved. The Company contends that because its affiliate, the Boilermakers, had previously petitioned for a company-wide unit, the AFL is estopped now to request a smaller unit.

While the union witnesses were regrettably lacking in frankness with respect to organizational efforts made at the Dewar Street yard, the evidence as a whole indicates that the AFL or its affiliate, the Boilermakers, has attempted to organize employees at both of the yards operated by the Company. Nevertheless, such previous organizational activity is not fatal to the position taken by the petitioner in this proceeding. Organizational activity on a broader basis is one of many circumstances which the Board considers in determining the propriety of a proposed bargaining unit, but the presence of that factor does not preclude a finding that a smaller unit is appropriate.³ It is clear from the record that the AFL regards the two yards to

³ *Matter of Kentucky Fluorspar Company*, 52 N. L. R. B. 227; *Matter of Union Lumber Company*, 53 N. L. R. B., No. 103; *Matter of Servel, Inc.*, 51 N. L. R. B. 224.

gether as being the ultimately appropriate unit, but it does not appear that effective organization has as yet extended to the Dewar Street yard.⁴ Though there is some interchange of employees between the two yards, such interchange is negligible. The unit sought by the AFL is clearly definable and the employees therein have indicated a present desire to bargain collectively. Under these circumstances we do not believe that the employees at the Freeport Street yard should be deprived of the opportunity to bargain collectively. Our finding that the unit here sought is appropriate will not, however, preclude a finding at a later date that a unit embracing the employees of both yards is appropriate.

Leadmen. There are five or six leadmen at each yard. They are next in authority to the superintendent at the Dewar Street yard and to the assistant superintendent at the Freeport Street yard, thus occupying positions generally classified as that of foremen. Although they cannot hire or discharge, it is their duty to make recommendations pertaining to the tenure of their subordinates, which recommendations serve as the basis for investigation and possible disciplinary action by the superintendents or the managers. We agree with the contention of the AFL that the leadmen are supervisory employees. We shall accordingly exclude them from the appropriate unit.

Truck drivers. There are two truck drivers in the employ of the Company. The Union would exclude them from the unit while the Company contends that they should be included. Approximately one-half their time is spent going between the yards or to and from the freight depot. The rest of their time is spent at the yards, about one-half at each yard. Their trucks are garaged at the Dewar Street yard and their superior is located at that yard. We shall exclude truck drivers from the appropriate unit.

We find that all production and maintenance employees at the Company's Freeport Street yard, excluding truck drivers, office and clerical employees, and guards, leadmen, foremen, assistant foremen, superintendents, assistant superintendents, and managers 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

⁴ Cf. *Matter of Metal Office Furniture Co.*, 51 N. L. R. B. 993.

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 the 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 James Russell Engineering Works, Inc., Boston, Massachusetts, 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 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 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 American Federation of Labor, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.