

IN THE MATTER OF CROWN ZELLERBACH CORPORATION, SEATTLE CHARCOAL DIVISION and UNITED BROTHERHOOD OF WELDORS, CUTTERS AND HELPERS OF AMERICA, LOCAL 9, AFFILIATED WITH C. U. A.

Case No. 19-R-1098.—Decided December 24, 1943

Mr. J. Paul Coie, of Seattle, Wash., for the Company.

Mr. Ray J. Evett, of Seattle, Wash., for the Weldors.

Mr. L. Presley Gill, of Seattle, Wash., for the Intervenors.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by United Brotherhood of Weldors, Cutters and Helpers of America, Local 9, affiliated with the C. U. A., herein called the Weldors, alleging that a question affecting commerce had arisen concerning the representation of employees of Crown Zellerbach Corporation, Seattle Charcoal Division, Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William A. Babcock, Jr., Trial Examiner. Said hearing was held at Seattle, Washington, on November 11, 1943. The Company, the Weldors, Machinists Union Local 79 chartered by the International Association of Machinists, affiliated with the A. F. of L., and Lumber and Sawmill Workers Union Local 2519, chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the A. F. of L., herein collectively called the Intervenors, 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. The Intervenors' motions to dismiss are denied for reasons hereinafter stated. All parties were afforded the 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

Crown Zellerbach Corporation, a Nevada corporation, has plants and offices throughout the United States and is engaged in the general business of pulp and paper manufacturing. The only plant involved in this proceeding is the charcoal manufacturing plant located in Seattle, Washington. The entire output of the plant is produced under contracts with the War Department of the United States Government and is delivered to the War Department within the State of Washington. Substantial quantities of the products so manufactured and delivered are eventually shipped to points outside the State of Washington. The Company concedes that in the operation of this plant it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Brotherhood of Weldors, Cutters and Helpers of America, Local 9, is a labor organization affiliated with the Confederated Unions of America, admitting to membership employees of the Company.

Machinists Union Local 79, chartered by the International Association of Machinists, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Lumber and Sawmill Workers Union Local 2519, chartered by the Brotherhood of Carpenters and Joiners of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about April 16, 1943, individual welders employed by the Company orally informed the Company that they desired to be represented by the Weldors and would like to have the Company enter into a collective bargaining agreement with the Weldors. They were informed that, since the Company's contracts with the War Department were temporary, the Company could not sign a contract with the Weldors. These employees reported this conversation to the Weldors which thereupon filed the present petition on April 19, 1943.

Prior to the filing of the petition, the Company also had conversations with representatives of the Intervenor with respect to collective bargaining agreements, and by letters dated May 5, 1943, and August 2, 1943, respectively, offered to continue until October 1, 1943, certain closed-shop contracts which had been executed by the Intervenor and a concern known as the Carlisle Company, the predecessor of the

Company, with respect to the operation of the plant herein involved.¹ These offers were accepted by the Intervenor.² Early in May 1943, representatives of the Weldors had conversations with representatives of the Company in regard to recognition and collective bargaining for welders employed by the Company.³ The Company declined to recognize or bargain with the Weldors. The Company's position in this respect was reaffirmed in a written communication to the Weldors dated September 27, 1943, which communication was a reply to a formal written demand for collective bargaining on the part of the Weldors by letter dated September 24, 1943.

Both the Company and the Intervenor contend that the present proceeding is barred by reason of existing collective bargaining agreements. In addition thereto, the Intervenor claims that the petition should be dismissed upon the ground that the Weldors made no demand for collective bargaining prior to the filing of its petition.

So far as the question of a bar arising from existing contracts is concerned, the contract of the Sawmill Workers Union is clearly not a bar since it has been in effect for more than 2 years⁴ and is of indefinite duration.⁵ The contract of the Machinists is equally ineffective as a bar since the Weldors' claim to representation preceded the effective date for automatic renewal.⁶

The further contention of the Intervenor that the petition should be dismissed because the Weldors made no formal demand upon the Company for collective bargaining prior to the filing of its petition, is equally without merit and has been previously presented and rejected by the Board.⁷ We see no reason to depart from this posi-

¹ The agreements in question purport to cover welders in addition to other employees of the plant. The agreement of the Sawmill Workers which is dated July 28, 1941, runs for an indefinite period, subject to termination upon 60 days' notice. The agreement of the Machinists was originally effective for 1 year from January 20, 1942, with provision for automatic renewal in the absence of notice by either party 30 days prior to January 20, 1942.

² Following October 1st, the general manager of the Company in oral conversations with representatives of the Intervenor agreed to continue the existing agreements with such unions indefinitely.

³ The welding employees of the Company were formerly employed by the Company's predecessor, The Carlisle Company. In November of 1942, the Weldors requested the latter to recognize it as bargaining agent for welders, which request was followed in December 1942 by the filing of a petition for investigation and certification of representatives with respect to welders (19-R-983). After hearing, the petition was subsequently withdrawn as the result of the transfer to the Company of the plant herein involved.

⁴ The present extension by the Company is without change in the terms of the contract as originally negotiated and is to all intents and purposes a continuation of the contract between the Company's predecessor and the Sawmill Workers Union. Moreover, since such extension was effected with notice of the Weldors' claim to representation, the extended contract is not a bar to the present proceeding. *Matter of The Walgreen Company*, 37 N. L. R. B. 764.

⁵ See *Matter of Borman Sportswear, Inc.*, 44 N. L. R. B. 742.

⁶ See *Matter of City Welding & Machine Company*, 46 N. L. R. B. 1357. Since the subsequent adoption and extension by the Company of the contract with the Company's predecessor occurred after notice to the Company of the Weldors' claim to representation, it likewise is no bar to the present proceeding.

⁷ See *Matter of The Columbus Iron Works Company*, 47 N. L. R. B. 430; *Matter of The Gilbert & Bennett Manufacturing Company*, 45 N. L. R. B. 1223, and cases cited therein.

tion; it is sufficient that as of the date of the hearing the petitioning union's status as bargaining representative is disputed and that recognition depends upon certification by the Board.

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Weldors represents a substantial number of employees in the unit hereinafter found appropriate.⁸

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 DETERMINATION OF REPRESENTATIVES

The Weldors contends that a unit composed of welders, cutters, and helpers employed by the Company is appropriate for the purposes of collective bargaining.⁹ The Company and the Intervenors both urge that a separate unit of welders is not appropriate and maintain that the welders should be included in the larger unit composed of maintenance and repair employees who are covered by the contract with the Machinists. In support of their contention, the Company and the Intervenors point to the history of collective bargaining and functional considerations affecting the relation of welders with the machinists and other employees in the maintenance and repair group hereinabove referred to.

With respect to the history of collective bargaining, it appears that while the Machinists has in the past on occasion bargained on behalf of the members of a sublocal known as Machinists Welders Union Local 1351, which at one time included the welders employed by the Company,¹⁰ the Machinists has not negotiated or dealt with the Company with respect to grievances for welders since the date when the Company took over the operations of the plant herein involved. Since that time and even prior thereto¹¹ the employees doing welding

⁸The Field Examiner reported that the Weldors had submitted four designations dated in September 1943, all of which bore the apparently genuine original signatures of persons whose names are on a current pay roll of the Company containing the names of four persons within the claimed appropriate unit.

The Intervenors relying upon their contracts offered no proof of representation.

⁹While the unit proposed by the Weldors includes cutters and helpers, it appears that of this group only welders are employed by the Company.

¹⁰It appears that while the welders herein concerned were members of Machinists Welders Union Local 1351, the local negotiated a wage adjustment for welders alone. Thereafter, upon the withdrawal of the charter of Local 1351 as the result of attempts on the part of the welders to establish a separate welders' international within the AFL, the welders at the plant involved were given the opportunity to transfer to the Machinists. However, none of the welders at the plant made such transfer then or at any subsequent time.

¹¹The welders were apparently well organized by the petitioner as early as November 1942, at which time the petitioner requested the Company's predecessor to recognize it as bargaining representative for the welders herein concerned.

appear to have been members of the Welders. As such, they have maintained an independent attitude and have refused to become identified with either the Machinists or the Lumber & Sawmill Workers Union. Moreover, the record discloses that notwithstanding the existence of closed-shop contracts purporting to cover welders,¹² the latter have not in practice been recognized by the Company's predecessor as entitled to the benefits provided thereunder¹³ and have on a number of occasions bargained as a group apart from the Machinists.¹⁴

So far as functional considerations are concerned, the evidence reveals that while welders have no separate craft foreman or superintendent and are under the jurisdiction of the machine shop foreman, they do, nevertheless, have considerable latitude and are not closely supervised in the performance of their work.¹⁵ Moreover, although welders and machinists were formerly indistinguishable during the period when the plant was under construction, welders and machinists now perform separate work due to specialization of tasks as the result of the expanded operations of the Company.¹⁶ While some welding is done alongside the benches of the machinists, welding is ordinarily performed in a separate portion of the machine shop where screens are provided to shield from the eyes of the machinists and other employees the light produced by the welding operation.

Under the circumstances, including the history of collective bargaining, the fact that welders are engaged in specialized operations and are to a large extent physically segregated from other employees, we are of the opinion, and find, that the welders as a group could properly function as a separate bargaining unit or as part of the Machinists' group of maintenance and repair employees,¹⁷ and that the desires of the affected employees should be the controlling consideration.¹⁸ Accordingly, we shall direct that the question concern-

¹² No attempt has been made to enforce the closed-shop provisions with respect to welders under either contract for the reason, at least in the case of the Machinists, that the Machinists has been unable to supply welders to the Company.

¹³ The Company's predecessor, while granting retroactive back pay to the machinists in accordance with the terms of the Machinists' contract, refused a similar request for retroactive back pay for the welders upon the ground that the welders were not covered by such contract.

¹⁴ In addition to conducting negotiations with respect to back pay, the welders as a group have negotiated with the Company's predecessor, certain grievances relating solely to welders.

¹⁵ The machine shop foreman does not actively direct the welders but lays out and designates the work to be done by the welders. The machine shop foreman has, however, the authority to require a welder to do over jobs not performed to his satisfaction.

¹⁶ The evidence reveals that while there are a number of machinists and welders who can perform the work of both groups, they dislike to do work other than that of the group to which they are attached. The welders involved in this proceeding perform welding work exclusively.

¹⁷ See *Matter of Curtiss-Wright Corporation*, 41 N. L. R. B. 1367. Cf. *Matter of Port Houston Iron Works*, 46 N. L. R. B. 155, and cases cited therein.

¹⁸ See *Matter of Allied Chemical and Dye Corporation*, 40 N. L. R. B. 1351; *Matter of Fort Pitt Malleable Iron Company*, 48 N. L. R. B. 818.

ing representation which has arisen be resolved by an election by secret ballot among the welders who were employed by the Company during the pay-roll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein, to determine whether they desire to be represented by the Weldors or by the AFL,¹⁹ or neither. Upon the result of this election will depend in part the determination of the appropriate unit. If a majority of the welding employees select the Weldors as their representative, they will constitute a separate unit; if a majority of them choose the AFL, they will be considered as having rejected separate representation, and having elected to become part of the larger unit composed of maintenance and repair employees who are covered by the contract with the Machinists.

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 Crown Zellerbach Corporation, Seattle Charcoal Division, Seattle, Washington, 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 Nineteenth 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 welders employed by the Company 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 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 United Brotherhood of Weldors, Cutters and Helpers of America, Local 9, affiliated with the C. U. A., or by the AFL, 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.

¹⁹ In the preceding case involving the Carlisle Company, the record of which was incorporated by motion into the present record, the Intervenor requested that they appear on the ballot under the single designation "AFL." In the absence of any indication that the Intervenor now desire a different designation, they will be so designated in accordance with the request appearing in the record.