

IN THE MATTER OF NEW MARKET STEEL CO., INC. and INTERNATIONAL BROTHERHOOD OF BOILER MAKERS, IRON SHIPBUILDERS, WELDERS AND HELPERS OF AMERICA, A. F. L.

Case No. 4-R-1250.—Decided December 28, 1943

Mr. Roberts B. Thomas, of New York City, for the Company.
Mr. Louis H. Wilderman, of Philadelphia, Pa., for the Union.
Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Boiler Makers, Iron Shipbuilders, Welders and Helpers of America, A. F. L.,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of New Market Steel Co., Inc., New Market, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at New Brunswick, New Jersey, on November 3, 1943. The Company and the Union appeared and participated.² All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues and to file briefs. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

New Market Steel Co., Inc., a New Jersey corporation located at New Market, New Jersey, is engaged as a subcontractor, in the business of assembling, welding, and delivering structural steel sections of hulls

¹ At the hearing, on motion of the Union, all formal papers were amended to correspond with this, the correct Union name.

² United Steelworkers of America, C. I. O., also served with notice, did not appear.

to shipyards located within the State of New Jersey. The Company purchases certain expendable supplies of which a portion, amounting to 1½ percent of the materials used by the Company, comes from points outside the State of New Jersey. The steel, which is its sole raw material, is owned by the United States Navy and the United States Merchant Marine. It is delivered to the Company at its New Market plant by the prime contractors. After the steel has been fabricated and assembled into hulls by the Company, it is returned to the prime contractors who incorporate the hulls into landing craft and oil tankers which are used in the prosecution of the war. During the year ending July 31, 1943, the Company received more than a million dollars for its services.

The Company contests the jurisdiction of the Board, contending that its raw material comes wholly from within the State of New Jersey, that the production of its prime contractors would not be affected by cessation of its operations, and that its product is used solely for war purposes and therefore bears no relation to commerce. These contentions are not supported by the record. The Company manufactures vital parts of instrumentalities used for purposes of transportation. Transportation is nonetheless commerce within the meaning of the Act because men and materials are being transported for reasons of war and not for business or pleasure. We cannot believe that cessation of the Company's operations would have no effect upon the operation of its two customers who depend upon the Company for services worth over a million dollars. We take notice of the improbability that the vast amount of steel used by the Company originates within the State of New Jersey. We find that the business of the Company affects commerce within the meaning of the National Labor Relations Act.³

II. THE ORGANIZATION INVOLVED

International Brotherhood of Boiler Makers, Iron Shipbuilders, Welders and Helpers 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

The Company refused to grant recognition to the Union as exclusive bargaining representative of its employees until the Union is certified by the Board in an appropriate unit.

³ *Newport News Shipbuilding & Dry Dock Co. v. N. L. R. B.*, 101 F. (2d) 841; *Matter of Spandoo Oil & Royalty Company*, 42 N. L. R. B. 942; *Matter of Ace Foundry Limited*, 38 N. L. R. B. 392.

A statement of the Regional Director introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the unit herein found to be appropriate.⁴

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 Union in its petition requested a unit of all production and maintenance employees of the Company, including truck drivers, checkers, and snappers, excluding supervisory and clerical employees, guards, and watchmen. The Company objected to the inclusion in the unit of snappers, truck drivers, and checkers. At the hearing the parties agreed to the inclusion of non-supervisory snappers and the exclusion of snappers designated as leaders. We see no reason to depart from the agreement of the parties respecting the snappers.

Truck drivers: The truck drivers do not work within the plant. They are engaged solely in the driving of trucks from the plant to points where the Company's products are delivered. Since they are neither production nor maintenance employees, and since they do not share the working conditions of such employees, we shall exclude truck drivers from the unit.

Checkers: The employees referred to by the Union as checkers are classified on the Company's pay roll as clerical employees or as expediters. The former check time; the latter check materials.

The time checkers note the men working in their various crafts at different locations within the plant, take time records and prepare time cards. They work under the supervision of the chief timekeeper. They have no authority to hire, discharge, or discipline, but have a duty to report facts which may lead to an employee's promotion or dismissal. Due to the nature of their work, they have access to information concerning rates of pay and plans of the Company with reference to changes in the status of employees. We agree with the Company that the time checkers are both clerical and confidential employees and shall exclude them from the unit.⁵

The expediters or material checkers work under the direction of the plant superintendent. It is their duty to trace material as it passes from one part of the plant to another to see that it is delivered at the

⁴ The Regional Director reported that the Union submitted 273 authorization cards, 168 of which bear apparently genuine original signatures corresponding with the names of persons listed on the Company's pay roll for September 26, 1943, which contained the names of 457 persons in the unit requested in the petition.

⁵ *Matter of Paramount Pictures, Inc.*, 45 N. L. R. B. 116; *Matter of The Babcock & Wilcox Co.*, 52 N. L. R. B. 900.

proper place when needed. The Company contends that the expeditors are confidential employees and should be excluded from the unit. They sometimes have advance information as to how work is going to be assigned but they do not share the time checker's knowledge of matters affecting labor relations. In our opinion the work of expeditors is not confidential and it is closely related to that of production employees. We shall, therefore, include expeditors in the unit.⁹

We find that all maintenance and production employees of the Company, including non-supervisory snappers and expeditors, but excluding clerical employees, guards, watchmen, snappers in a supervisory position, time checkers, truck drivers, and all 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 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 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 New Market Steel Co., Inc., New Market, New Jersey, 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 Fourth 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 in the armed forces of the United States who present themselves in person at the polls, but

⁹ *Matter of Pangborn Corporation*, 53 N. L. R. B. 726; *Matter of The Black & Decker Electric Company*, 47 N. L. R. B. 726; *Matter of Worthington Pump & Machinery Corp.*, 44 N. L. R. B. 779.

excluding those employees who have since quite 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 International Brotherhood of Boiler Makers, Iron Shipbuilders, Welders and Helpers of America, affiliated with the 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 Election.