

In the Matter of MARKEY MACHINERY CO., INC. and UNITED BROTHERHOOD OF WELDORS, CUTTERS AND HELPERS OF AMERICA, LOCAL NO. 9.

*Case No. 19-R-982.—Decided January 4, 1944*

*Grosscup, Morrow & Ambler*, by *Mr. John Ambler*, of Seattle, Wash., for the Company and the Association.

*Mr. Charles M. Baxter*, of Seattle, Wash., for the Weldors.

*Mr. L. Presley Gill*, of Seattle, Wash., for the I. A. M.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Brotherhood of Weldors, Cutters and Helpers of America, Local No. 9, herein called the Weldors, alleging that a question affecting commerce had arisen concerning the representation of employees of Markey Machinery Co., Inc., Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Seattle, Washington, on September 13, 1943. The Company, the Weldors, Machinists Union, Local No. 79, International Association of Machinists, A. F. L., herein called the I. A. M., and Washington Metal Trades, Inc., appeared, and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing the Company, Washington Metal Trades, Inc., and the I. A. M. moved to dismiss the petition on the ground that the Weldors had made no demand for recognition upon the Company prior to the filing of its petition. For the reasons appearing in Section III, hereinbelow, the motion is denied. 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

Markey Machine Co., Inc., incorporated under the laws of the State of Washington, has its office and plants in Seattle, Washington. The Company manufactures at its two plants deck machinery and other products. The Company also does machine work for other firms pursuant to contracts. The principal raw materials used by the Company are steel plate, iron bars, and steel castings. During the year 1942, the Company purchased raw materials valued at approximately \$520,000, approximately 60 percent of which was shipped to the Company's plants from points outside the State of Washington. During the same year the Company's gross sales amounted to approximately \$1,500,000, of which approximately 45 percent was shipped to points outside the State of Washington. Virtually all of the Company's activities are directly related to the war effort.

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

Washington Metal Trades, Inc., herein called the Association, is a nonprofit association of most of the companies engaged in metal processing in Seattle, Washington, and vicinity. It represents its member companies and other companies which have so authorized it, in collective bargaining negotiations and executes contracts on their behalf.

#### II. THE ORGANIZATIONS INVOLVED

United Brotherhood of Weldors, Cutters and Helpers of America, Local No. 9, is an unaffiliated labor organization admitting to membership employees of the Company.

Machinists' Union, Local No. 79, International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

In March 1942, the Weldors requested recognition by the Company as the exclusive bargaining representative of the welders, cutters, and their respective helpers in the Company's employ. The Company refused this request, stating that its collective bargaining was handled by the Association, of which it is a member and that it was already under contract with the I. A. M. Thereafter the Weldors filed a petition for investigation and certification, alleging that all welders in the

employ of several, but not all, of the companies which were members of the Association constituted an appropriate unit.<sup>1</sup> Markey was one of the companies named in that petition. The Board dismissed the petition, but without determining the issues presented in the instant proceeding.<sup>2</sup> Although the evidence does not clearly establish that the formal demand for recognition was renewed after the dismissal of the prior case, we are satisfied that the Company knew of the Weldors claim, not only prior to the filing of the petition in this case, but before it entered into its contract with Local 79.<sup>3</sup> Furthermore, the Company's refusal to recognize the Weldors prior to the earlier case was based upon the same objections which it now raises in the instant proceeding. The Weldors was justified in assuming that a renewal of its demand would have been an idle gesture.

The Company and the I. A. M. contend that their contract, which purports to cover "machinist welders," is a bar to the Weldors' petition. The contract, however, aside from any question as to its coverage, is not a bar, since pursuant to notice by the I. A. M. of intention to renegotiate, it expired on May 31, 1943 and the petition in the instant proceeding was filed in December 1942, long before the final date required for such notice.

A statement of an attorney of the Board, introduced into evidence at the hearing, indicates that the Weldors represents a substantial number of employees in the unit which it claims to be appropriate.<sup>4</sup>

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 all welders, cutters, and their respective helpers employed by the Company at both its plants constitute an appropriate unit. The I. A. M. contends that a separate unit of welders is inappropriate and that, in any event, the appropriate unit should be Association-wide in scope. The Company and the Association contend that whether or not the welders are found to constitute an appropriate unit, such unit should be Association-wide.

The Company has two plants, referred to as Plant 1 and Plant 2. At Plant 1 the Company employs 1 full-time welder who does what-

<sup>1</sup> *Matter of Washington Metal Trades, Inc.*, 43 N. L. R. B. 158.

<sup>2</sup> The dismissal was based upon the fact that most of the companies involved had contracts with several unions covering welders, that the functional delineation of the unit sought by the Weldors was not sufficiently definite and would not eliminate jurisdictional strife; and that the Weldors, though seeking an Association-wide unit had named only part of the companies in the Association in its petition.

<sup>3</sup> Discussed in Section IV, below.

<sup>4</sup> The attorney reported that the Weldors submitted 18 authorization cards bearing apparently genuine signatures of persons listed on the Company's pay roll of March 5, 1943, which contained the names of 25 employees in the alleged appropriate unit. The I. A. M. relied upon its contract as evidence of its interest in the proceedings.

ever welding work is required in the assembly of the machinery produced by the Company. The welder at Plant 1 works under the supervision of the superintendent of both plants. There are 92 employees at Plant 1, nearly all of whom are machinists and machinists' helpers. Plant 2, located about a mile away from Plant 1, has about 26 employees. These employees are all welders or burners, with the exception of a clerk, an assistant superintendent, and 2 machinists and a machinists' helper, who work in a separate building. The welders and burners devote their time entirely to welding and burning, under the immediate supervision of working shift foremen, themselves welders. Their wages are comparable to those of other skilled employees. When the welding requirements at Plant 1 become too great for the 1 welder regularly stationed there, another welder is sent to that plant from Plant 2. Only on rare occasions do any of the machinists do any welding. Since the welders constitute a separate and clearly identifiable group of skilled employees, performing specialized functions, we are of the opinion that a unit of welders and burners may be appropriate.<sup>5</sup> We shall, however, exclude from any unit which we may find to be appropriate the working shift foremen, who are in complete charge of their shifts and have authority to recommend disciplinary action and discharge of employees under their supervision.

The remaining issue is whether a unit confined to employees of the Company can be appropriate or whether the bargaining history is such that only an Association-wide unit is appropriate. The Association was organized in 1936 and since that time has negotiated annual bargaining agreements with various A. F. L. affiliates, on behalf of its members and other companies which have expressly so authorized it. About the same time a movement began among the welders in the Seattle area to establish themselves as a separate bargaining group. As a result in 1936 the A. F. L. Boilermakers' Union chartered a separate local of Boilermakers Welders and in 1937 the I. A. M. granted a charter to Machinists Welders, Local 1351.<sup>6</sup> All machinist welders in Local 79, the I. A. M. local here involved, transferred their affiliation to Local 1351. Thereafter the welders maintained a separate identity and in some instances entered into separate contracts with the Association, acting on behalf of its member firms which employed welders. Toward the end of 1941, however, the A. F. L. rejected the welders' plea for a separate international welders' union and directed its affiliates to disestablish their separate welders' locals. The I. A. M. and its Local 79 directed the welders to reaffiliate with Local 79. Instead of reaffiliating with the I. A. M., the members of Local 1351

<sup>5</sup> *Matter of Taylor Forge & Pipe Works*, 51 N. L. R. B. 48; *Matter of Truck Welding Company, Inc.*, 43 N. L. R. B. 206; *Matter of Dedman Foundry & Machine Company*, 50 N. L. R. B. 1019; *Matter of Solar Aircraft Co.*, 51 N. L. R. B. 964

<sup>6</sup> See discussion in *Matter of Washington Metal Trades*, footnote 1, *supra*.

organized an independent welders' union which ultimately became one local of the Weldors. When the welders broke away from the A. F. L., the Association continued to bargain only with the A. F. L. unions, which proceeded again to include welders within the provisions of their contracts. Thus the Association, in September 1942, negotiated on behalf of the Company a contract with the I. A. M. which purported to cover welders. However, there is no evidence that the welders, following the organizational schism, have ever acquiesced in the attempt to merge them into the various A. F. L. craft units. On the contrary, the fact that the Weldors petitioned for an election among the Company's welders in January 1942,<sup>7</sup> and are still demanding separate bargaining rights for welders demonstrates a clear refusal to accede to such a merger. Thus, it appears that there has been no bargaining in a unit of welders on an Association-wide basis for approximately 2 years. Any bargaining in welders' units on an Association-wide basis which may once have been carried on ceased too long ago to be persuasive in the instant proceeding. We find that the welders in the Company's employ may properly constitute an appropriate unit.

On the other hand, the closely integrated operations of the Company indicate that the unit including all of the Company's production employees, for which the I. A. M. contends, might also be appropriate. We shall, therefore, make no finding at this time as to the appropriate unit or units, but shall first ascertain the desires of the employees involved. We shall direct that an election by secret ballot be held among the welders and burners and their respective helpers employed by the Company 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, to determine whether they desire to be represented by the Weldors, or by the I. A. M., for the purposes of collective bargaining, or by neither. Upon the results of such election will depend, in part, our determination of the appropriate unit. If a majority of those participating in the election select the Weldors, they will have indicated their desire to constitute a separate bargaining unit. If a majority select the I. A. M., they will have indicated that they desire to be a part of the unit presently represented by the I. A. M. and they will be deemed to be a part of such unit.<sup>8</sup>

The I. A. M. requested that it be designated on the ballot used in the election as Machinists' Union, Local 79. This request is hereby granted.

<sup>7</sup> *Matter of Washington Metal Trades, Inc*, footnote 1, *supra*.

<sup>8</sup> The I. A. M. does not seek an election in the entire unit which it represents, and the record is inconclusive as to whether or not that unit is Association-wide. Consequently, we shall make no finding as to the appropriate unit, nor shall we issue a formal certification, in the event that the I. A. M. wins the election. See *Matter of Armour and Company*, 49 N. L. R. B. 195.

## 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 Markey Machinery Co., Inc., 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 all welders, burners, and their respective helpers in the employ of Markey Machinery Co., Inc., Seattle, Washington, excluding the shift foremen and any other supervisory employees with authority to hire, promote, discipline, discharge, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 United Brotherhood of Weldors, Cutters and Helpers of America, Local No. 9, or by Machinists' Union Local 79, International Association of Machinists, affiliated with the American Federation of Labor, 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.