

In the Matter of SILVER ENGINEERING WORKS, INC. and UNITED STEEL-
WORKERS OF AMERICA, LOCAL UNION 3119, C. I. O.

Case No. 17-R-744.—Decided January 5, 1944

Mr. James A. Woods, of Denver, Colo., for the Company.

Mr. John C. Monarch, of Denver, Colo., for the U. S. A.

Mr. W. B. Jordan, of Denver, Colo., for the I. A. M.

Mr. C. L. Murphy, of Denver, Colo., for the Boiler Makers.

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America,¹ herein called the U. S. A., alleging that a question affecting commerce had arisen concerning the representation of employees of Silver Engineering Works, Inc., Denver, Colorado, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John A. Weiss, Trial Examiner. Said hearing was held at Denver, Colorado, on November 18, 1943. The Company, the U. S. A., Local Lodge No. 47, International Association of Machinists, A. F. of L., herein called the I. A. M., and International Brotherhood of Boiler Makers, Iron Ship Builders, Welders & Helpers of America, Local Union 179, A. F. of L., herein called the Boiler Makers, 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:

¹ The record shows that Local Union 3119 of the United Steelworkers of America is the local involved herein. We also take notice of the fact that the afore-mentioned labor organization is affiliated with the Congress of Industrial Organizations. Accordingly, all papers in this proceeding are hereby amended to reflect these findings.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Silver Engineering Works, Inc., a Colorado corporation with its office and plant located in Denver, Colorado, is presently engaged in the manufacture of deck equipment for the United States Maritime Commission and parts for the Navy and War Departments of the United States. In the course and conduct of its business, the Company purchased raw materials in 1942 valued in excess of \$500,000, of which 75 percent was obtained from points outside the State of Colorado. During the year 1942, the value of the finished products manufactured by the Company was in excess of \$1,005,000, of which approximately 80 percent was sold, transported, and distributed to points outside the State of Colorado; it is anticipated that the value of the sales for the year 1943 will be in excess of that for 1942, and that approximately the same percentage will be shipped in interstate commerce. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Local Union No. 3119, United Steelworkers of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Local Lodge No. 47, International Association of Machinists, and International Brotherhood of Boiler Makers, Iron Ship Builders, Welders & Helpers of America, Local Union No. 179, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about September 20, 1943, the U. S. A. requested recognition of the Company as the collective bargaining representative of its production and maintenance workers. The Company replied on or about September 29, 1943, refusing such recognition on the ground that it was presently operating under contracts with both the I. A. M. and the Boiler Makers covering many of the employees in the unit requested by the U. S. A. At the hearing both the I. A. M. and the Boiler Makers objected to the petition and all proceedings arising therefrom on the ground that the limitation on the expenditure of the Board's funds in the Appropriations Act² precludes the Board from

² National Labor Relations Board Appropriations Act, 1944, Title IV, Act of July 12, 1943, P. L. 135, 78th Congress, 1st Session.

proceeding in this case. However, since the contracts between the Company and the I. A. M. and the Boiler Makers, respectively, expire on January 1, 1944, we are of the opinion that the request of the U. S. A. was timely made,³ and that, for reasons stated in the recent *U. S. Bedding Company* case,⁴ the objections of the I. A. M. and the Boiler Makers are without merit. Accordingly, we find that the contracts between the Company and the I. A. M. and the Boiler Makers, respectively, do not constitute bars to the instant proceeding.

Statements of a Board Attorney and the Trial Examiner, introduced into evidence at the hearing, indicate that the U. S. A. represents a substantial number of employees in the unit which it seeks.⁵

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 U. S. A. seeks a unit comprised of all production and maintenance employees of the Company, excluding supervisors, office clerks, watchmen, guards, metallurgists, and mechanical engineers. This contention is opposed by both the I. A. M. and the Boiler Makers who, pursuant to the results of consent elections, were duly designated as the collective bargaining representatives of employees of the Company engaged in its machine shop⁶ and plate shop respectively.⁷ The Company, ostensibly neutral, questions the advisability of conducting an election which might result in the certification of rival labor organizations.

Prior to the time the I. A. M. and the Boiler Makers were designated as the collective bargaining representatives of the machine shop and plate shop employees, the Company had had no history of collective

³ See *Matter of Houde Engineering Corp.*, 36 N. L. R. B. 587; *Matter of United States Rubber Company*, 41 N. L. R. B. 1005; *Matter of Dain Mfg. Company*, 41 N. L. R. B. 1056.

⁴ *Matter of U. S. Bedding Co.*, 52 N. L. R. B. 382.

⁵ The Board Attorney reported that the U. S. A. submitted 81 designation cards bearing apparently genuine and original signatures; that 68 of the signatures appearing thereon are the names appearing upon the Company's pay roll for the period ending October 15, 1943; and that there are approximately 182 persons in the unit sought by the U. S. A.

The Trial Examiner reported that the U. S. A. submitted two additional designations at the hearing bearing apparently genuine and original signatures and containing the names of persons appearing upon the afore-mentioned pay roll.

Both the I. A. M. and the Boiler Makers rely upon their current contracts with the Company for the establishment of their interest.

⁶ The original unit in which the consent election was conducted included employees of the machine shop, machine assembly department, as well as laborers other than those assigned to the plate shop. However, the latter group is not included within the scope of the contract between the Company and the I. A. M. Accordingly, for the purposes of this proceeding, we shall consider them as unrepresented.

⁷ The unit sought by the U. S. A. would include therein not only the employees in each of the foregoing units, but also laborers other than those assigned to the plate shop and shipping department employees, who are presently not included within the scope of the contracts between the Company and the I. A. M., and the Boiler Makers.

bargaining. It has been continuously conducted as a single business enterprise operating under a uniform labor policy with respect to all its employees. Its overall policies are formulated by the general manager, and its employees are hired through the personnel office which procures workers for all departments. On the other hand, there exists a physical separation between the machine shop and the plate shop, in that they are located in separate buildings, and the employees attached to each are under separate local supervision. Furthermore, the present collective bargaining relations of the Company indicate the feasibility of representation upon a separate unit basis. In view of the foregoing, we are of the opinion that the machine shop employees and the plate shop employees could properly continue to function as separate bargaining units, or be combined within a single unit, together with the remaining employees of the Company who are still unrepresented for the purposes of collective bargaining. Accordingly, our determination of the unit issue will depend in part upon the expressed desires of the employees themselves, and we shall make no final determination of the unit or units at this time. We shall direct separate elections by secret ballot among the employees in the groups currently represented by the I. A. M. and the Boilermakers, respectively, and included within the scope of their contract with the Company, and among the remaining production and maintenance employees, excluding in each group all supervisory employees with authority to hire, promote, discharge, discipline, 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 the Direction of Elections herein, subject to the limitations and additions set forth in the Direction. The respective voting groups shall be as follows:

1. All tool and die makers, machinists, specialists, production workers, machinists' helpers, helper apprentices, and regular apprentices in the Company's machine shop and machine assembly department, excluding clerical employees, storeroom and shipping department employees, truck drivers and laborers, to determine whether they desire to be represented by the U. S. A., the I. A. M., or by neither.

2. All employees engaged in the plate shop of the Company, excluding clerical workers, to determine whether they desire to be represented by the U. S. A., the Boiler Makers, or neither; and

3. All remaining production and maintenance employees of the Company including laborers not engaged in the plate shop, and shipping and storeroom department employees, but excluding watchmen, guards, mechanical engineers, metallurgists, office employees,

and clerical employees, to determine whether or not they desire to be represented by the U. S. A.

As stated above, upon the results of these elections will depend in part, our determination of the unit or units.

DIRECTION OF ELECTIONS

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 Silver Engineering Works, Inc., Denver, Colorado, separate elections 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 Seventeenth 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 following groups of employees 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 elections, 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:

(a) All tool and die makers, machinists, specialists, production workers, machinists' helpers, helper apprentices, and regular apprentices, in the Company's machine shop and machine assembly department, excluding clerical employees, plate shop employees, storeroom and shipping department employees, truck drivers and laborers, to determine whether they desire to be represented by Local No. 47, International Association of Machinists, affiliated with the American Federation of Labor, or by Local Union No. 3119, United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither;

(b) All employees of the Company at its plate shop excluding clerical workers to determine whether they desire to be represented by Local 179, International Brotherhood of Boiler Makers, Iron Ship Builders, Welders & Helpers of America, affiliated with the American Federation of Labor, or by Local Union No. 3119, United Steel-

workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither; and

(c) All remaining production and maintenance workers of the Company, including laborers not engaged in the plate shop and shipping and storeroom department employees, but excluding watchmen, guards, mechanical engineers, metallurgists, office employees, and clerical employees, to determine whether or not they desire to be represented by Local Union No. 3119, United Steelworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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