

In the Matter of STACY BROTHERS GAS CONSTRUCTION COMPANY and
UNITED CONSTRUCTION WORKERS, UNITED MINE WORKERS OF
AMERICA

Case No. 9-R-1259.—Decided January 18, 1944

Messrs. C. J. Petzhold and Ray Kunkel, of Cincinnati, Ohio, and Mr. W. M. Summer, of Columbus, Ohio, for the Company.

Mr. Stanley Denlinger, of Akron, Ohio, Mr. George Rice, of Cincinnati, Ohio, and Mr. Fred Rausch, of Columbus, Ohio, for the U. M. W. A.

Messrs. E. C. Bundy, H. J. Klinger and John M. Kilcoyne, of Cincinnati, Ohio, for the A. F. L.

Miss Frances Lopinsky, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Construction Workers, United Mine Workers of America, herein called the U. M. W. A., alleging that a question affecting commerce had arisen concerning the representation of employees of Stacy Brothers Gas Construction Company, St. Bernard, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter F. Ward, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on November 10, 1943. The Company, the U. M. W. A., and International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers, Local No. 105, A. F. of L., herein called the A. F. L., 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. 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:

54 N. L. R. B., No. 95.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Stacy Brothers Gas Construction Company is an Ohio corporation, having its principal place of business in St. Bernard, Ohio. It is engaged in the business of general steel and alloy plate fabrication and construction. Approximately 90 percent of the raw materials, principally steel, used by the Company is shipped to it from points outside the State of Ohio, and approximately the same percentage of the finished products of the Company is shipped by it to points outside the State of Ohio. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Construction Workers affiliated with the United Mine Workers of America is a labor organization admitting to membership employees of the Company.

International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers, Local 105, affiliated with the American Federation of Labor is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

By letter dated October 15, 1943, the U. M. W. A. requested recognition as exclusive bargaining representative for the Company's employees. The Company replied that it could not grant such recognition because it was then bound by a contract with the A. F. L. The said contract, dated December 18, 1942, provided for a term of 1 year, automatically extendible for 1 year unless notice in writing be given 2 months prior to the termination date. Since the U. M. W. A.'s request was made prior to the operation of the automatic renewal clause, the contract is no bar to a present determination of representatives.¹

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the U. M. W. A. 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.

¹ See *Matter of James Doak, Jr., Co.*, 52 N. L. R. B. 378.

² The Field Examiner reported that the U. M. W. A. submitted 267 application for membership cards, 231 of which bore apparently genuine original signatures corresponding with names of persons appearing on the Company's pay roll of October 20, 1943, which contained the names of 354 employees in the appropriate unit; that the cards were dated October 1943.

IV. THE APPROPRIATE UNIT

All parties agree that the appropriate unit should consist of all production and maintenance employees of the Company at its St. Bernard, Ohio, plant. The U. M. W. A. and the A. F. L. request the inclusion of 24 working foremen in this unit. These foremen have been bargained for by the A. F. L. since 1937. Except in matters of increases in pay,³ none of the 24 can effect changes in the status of employees or effectively recommend such action. They are in charge, however, of groups of employees ranging in size from 2 to 60 persons, and the amount of time they spend doing the same work as that done by their subordinates ranges from 10 percent for some foremen to approximately 100 percent for others. It is clear that those working foremen who spend practically all of their time working manually, and whose crews are small, are production employees in the nature of gang leaders and should be included in the unit. However, foremen who spend the major portion of their time in supervisory duties or whose crews are large, necessarily bear the responsibility of supervisors since the supervisory staff to which these working foremen are directly responsible comprises only a superintendent and three assistants, one of whom is in charge of the night shift. It is our opinion, therefore, that those foremen who spend the major portion of their time in manual labor and who work with crews of eight or less do not have supervisory status as we customarily define it. We shall, accordingly, include these foremen in the unit.⁴ Similarly, it is our opinion that those foremen who spend the greater portion of their time in supervisory duties or who direct the work of crews numbering more than eight, are properly to be considered as supervisory employees in the usual sense. We shall, accordingly, exclude such foremen from the unit.⁵

We find that all production and maintenance employees of the Company at its St. Bernard, Ohio, plant, including working foremen who spend the major portion of their time in manual labor and who head crews of eight or less, but excluding all Company officials, clerks, salesmen, office help, guards,⁶ and all working foremen who spend the major portion of their time in supervision, or who head crews

³ Evidence as to the right to make recommendations concerning increases was not developed as to individual foremen. It is not clear from the record which foremen have such a right nor how much weight is given such recommendations.

⁴ F. Montgomery, E. Bennett, H. Gettys, W. Highwood, D. Brockman, I. Whippel, E. Roof, W. Hanna, and F. Cismati were the only employees of the Company who fell within this classification at the time of the hearing.

⁵ A. Feist, L. Perry, F. Reichert, C. Shafer, D. Traua, R. Scott, E. Kissick, E. Shafer, R. DeWees, A. B. Newby, H. Kinran, G. Grote, H. Bley, A. Wright, and W. Nichols were the foremen on the pay roll of the Company at the time of the hearing who met this description.

⁶ All parties are in agreement concerning these exclusions.

of more than eight, 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

The Company requests clarification of the eligibility to vote of 42 men whom it discharged at the request of the A. F. L. under its closed-shop contract with that union. These men are presently on the pay roll of the Company by order of the War Labor Board, pending that agency's determination of the validity of the discharges. Inasmuch as they are, therefore, employees of the Company, their eligibility is governed by the same rules as govern the eligibility of all other employees of the Company in the appropriate unit.

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.

After the hearing, the A. F. L. requested that it be permitted to withdraw from the proceeding and that its name not be placed on the ballot. The request is hereby granted.

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 Stacy Brothers Gas Construction Company, St. Bernard, Ohio, 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 Ninth 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 those persons who were discharged for non-payment of A. F. L. dues and have been conditionally reinstated) including those 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 United Construction Workers, United Mine Workers of America, for the purposes of collective bargaining.

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