

In the Matter of CHICAGO BRIDGE AND IRON CO. and OFFICE EMPLOYEES
UNION #23520, A. F. OF L.

Case No. 20-R-965.—Decided February 1, 1944

Messrs. H. L. Ricks and F. W. Schooley, of Eureka, Calif., for the Company.

Mr. Albin J. Gruhn, of Eureka, Calif., for the Union.

Lt. John D. Burky, of Eureka, Calif., for the United States Navy.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Office Employees Union #23520, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Chicago Bridge and Iron Company, Eureka, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at Eureka, California, on December 3, 1943. The Company, the Union, and the United States Navy, herein called the Navy, 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Chicago Bridge and Iron Company is an Illinois corporation with its principal office and place of business in Chicago, Illinois. It owns and operates several plants of various types located in widely

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separated parts of the United States. This proceeding involves only the Company's plant at Eureka, California, where it is engaged in the construction of floating drydocks for the Navy under a cost plus fixed fee contract. Approximately 99 percent of the material used by the Company at Eureka comes from outside the State of California. All completed floating drydocks are delivered by the Company to the Navy at Eureka for use at any place in the world where they may be needed.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Office Employees Union #23520, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

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

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 hereinafter found appropriate.¹

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 requests a unit composed of all office clerical employees of the Company excluding confidential and supervisory employees and all those working in the main office of the so-called Navy Department, and the Navy Time Office, and employees with supervisory functions. The Company insists upon the inclusion of the "Navy employees" in the unit.

Under the cost plus fixed fee contract that the Company has with the Navy, the Company pays for all materials and labor used by it, and files proof of payment with the Navy, which reimburses the Company

¹ The Regional Director reported that the Union submitted 33 application-for-membership cards, all of which bore apparently genuine original signatures; that the names of 30 persons appearing on the cards were listed on the Company's pay roll of October 31, 1943, which contained the names of 90 employees in the appropriate unit; that the cards were dated in the months of August through November 1943.

for payments made. The function of the Navy employees is to audit the Company's records and operations on behalf of the Navy. Reimbursements are made or withheld on the basis of their analyses.

The employees in the main office of the Navy Department work under the direction of the Navy Auditor, a Civil Service employee of the Navy. The Navy Time Office employees work under the direction of the Assistant Navy Auditor. Both departments are under the direct supervision of a Naval officer and perform all work in accordance with the Navy's Bureau of Yards and Docks Manual of Accounting and Auditing. The departments are housed in buildings separate from each other and from the offices where the other clerical employees of the Company, herein called the CBI employees are located. The "Navy employees" and the CBI employees join in the use of restaurant and recreational facilities of the Company and occasionally in the performance of their work. All are paid by the Company which is repaid by the Navy for their salaries.

The Company's personnel office is used for the formal hiring of all employees, but actual control of hiring and discharging "Navy employees" is in the Navy's Officer in Charge. Navy personnel select employees, determine their starting rate of pay and direct the Company to hire such employees at such pay. While we do not question the proposition that these employees are employees of the Company and not civil servants, it nevertheless appears that their conditions of employment are such as to separate their collective bargaining interests from the others. For this reason, the unit requested by the Company would be impracticable for purposes of collective bargaining. We find, therefore, that all office clerical employees of the Company, excluding those working in the Navy Department Office and the Navy Time Office under the direct supervision of Navy Department personnel, confidential employees, 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 payroll 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 Chicago Bridge and Iron Company, Eureka, California, 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 Twentieth 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 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 Office Employees Union #23520, affiliated with the American Federation of Labor, for the purposes of collective bargaining.