

In the Matter of THE BOARDMAN Co. and UNITED STEELWORKERS OF  
AMERICA, CIO

Case No. 16-R-771.—Decided February 28, 1944

*Mr. Edward Spiers*, of Oklahoma City, Okla., for the Company.  
*Mr. John H. Curry*, of Oklahoma City, Okla., 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 United Steelworkers of America, CIO,<sup>1</sup> herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The Boardman Co.,<sup>2</sup> Oklahoma City, Oklahoma, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Elmer Davis, Trial Examiner. Said hearing was held at Oklahoma City, Oklahoma, on January 6, 1944. The Company and the Union appeared and participated.<sup>3</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company moved the dismissal of the petition alleging that the Board lacks jurisdiction; that the petition is fatally defective; and that no question concerning representation has arisen (1) because recognition has never been denied the Union, and (2) because the Union does not show substantial representation. For reasons herein given, the motion is denied. The Trial Examiner's rulings made at

<sup>1</sup> The petition was filed by the Union on behalf of its Local 2561. The Company contended that the petition was defective in that its caption carried the name of the Local but it was signed in the name of the International. We find no merit in this contention. See *Matter of Fort Dodge Creamery Co.*, 53 N. L. R. B. 928.

<sup>2</sup> The parties stipulated that this is the correct name of the Company. The formal papers were captioned "The Boardman Company." There is no merit in the Company's contention that this misnomer is ground for dismissal of the petition.

<sup>3</sup> International Association of Bridge, Structural and Ornamental Iron Workers, Shopman's Local, 546, AFL, herein called the Iron Workers, was not served with notice and did not appear at the hearing. Subsequently it requested that it be accorded a place on the ballot in the election herein directed. Since it appeared that the Iron Workers had membership among the employees of the Company prior to the hearing, the motion was granted and this Decision and Direction of Election was amended on March 11, 1944, to include the Iron Workers on the ballot.

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

The Boardman Co., a Delaware corporation, is engaged at its plant in Oklahoma City, Oklahoma, in the manufacture and production of special equipment used in the construction of defense industries and in the sale and servicing of construction equipment. During the year 1943, the Company purchased raw materials amounting to approximately \$500,000, in value, 95 percent of which originated at points outside the State of Oklahoma. During the same period, the Company's sales amounted to approximately \$900,000, of which approximately 13 percent was shipped to points outside the State of Oklahoma.

Contrary to its contentions we find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.<sup>4</sup>

#### II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company through its Local 2561.

#### III. THE QUESTION CONCERNING REPRESENTATION

On June 24, 1943, the Union was defeated in a Board ordered election<sup>5</sup> at which no representative was chosen by the employees of the Company. On November 10, 1943, a representative of the Union called on Edward Spiers, the Company's counsel, stated that the Company's employees were showing renewed interest in the Union, and requested that a new election be held by consent. Spiers stated that he would take the matter up with the president and board of directors of the Company. On the same day the Union filed its petition.<sup>6</sup> The Company contends that no question concerning representation has here arisen because the Company's board of directors has never refused the Union's request for a consent election. We reject this contention. The Company's board of directors has met since the request was made.

<sup>4</sup> The Board asserted its jurisdiction over the Company's operations in *Matter of The Boardman Co.*, 50 N. L. R. B. 405, a Decision and Direction of Election hereinafter discussed.

<sup>5</sup> *Matter of The Boardman Co.*, footnote 3 *supra*. The Union lost the election by a vote of 31 to 36; 3 ballots were challenged.

<sup>6</sup> The petition states that the Company refused to consent to an election. There is no evidence of fraudulent intent in making the misstatement, nor was the Company injured thereby. It is, therefore, no ground for dismissal as the Company urges. See *Matter of Lennox Furnace Co.*, 50 N. L. R. B. 80.

The matter was not discussed. This failure to act on the Union's request is tantamount to refusal thereof.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>7</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 Union requests a unit of all production and maintenance employees excluding employees in the tractor department, supervisory and technical personnel, clerical employees, and toolroom employees. The Company takes the position that it is a small concern, not departmentalized and that all but supervisory employees should be included in the unit. With exception of the office and technical employees<sup>8</sup> who because of the nature of their work do not share interests with production and maintenance employees, this position is substantially valid. Although the tractor department is separately housed, it interchanges employees with the rest of the plant. All production and maintenance employees are subject to the same supervision, exercise comparable skills and are paid on the same basis. The toolroom is an integral part of the factory. We shall, therefore, exclude clerical, technical, and supervisory employees but include all others in the unit.

The production and maintenance employees are under the general supervision of O. D. Underwood. The Company contends that Underwood is the only person whose powers of supervision warrant his exclusion from the unit. The Union requests the exclusion of certain other employees, discussed below.

*George Day, W. M. Stewart, and A. D. Nicholas* are subforemen directly under Underwood. Day and Stewart are on the day shift; Nicholas on the night shift. The Company's operations are carried on in several different buildings; the Company's president stated that these men work "between the buildings." They work manually only

<sup>7</sup> It appears from the Field Examiner's report that the Union submitted 37 application for membership cards, all of which bore apparently genuine original signatures corresponding with names of persons listed on the Company's pay roll of November 8, 1943, which contained the names of 97 persons in the appropriate unit. At the hearing, the Union submitted 9 authorization cards, 2 of which were apparently signed by persons listed on the said pay roll. Five of the cards submitted to the Field Examiner were undated, the balance were signed in November 1943. The cards submitted to the Trial Examiner were signed in November and December 1943. The Company avers that the showing here made by the Union is no better than that made prior to the June election. At that time, 10 of the cards submitted were dated 1941, 1 was dated 1942, and 1 was undated. Only 25 were new. The fact that the cards now presented were signed so recently indicates a present interest in organization that was lacking in June 1943.

<sup>8</sup> These categories include salesmen, draftsmen, tracers, and telephone operators.

in emergencies or on construction work. The major portion of their time is taken up in supervisory activities. *C. T. Belding* is foreman of the tractor department which is housed in a separate building. He works manually wherever his skill as a mechanic is needed and supervises the four other men in the department. Although the Company insists that Underwood personally supervises all production and maintenance employees, it is apparent from the physical facts, the number of separate buildings involved, and the amount of time that Day, Stewart, Nicholas, and Belding spend in supervision, that these employees have supervisory responsibility and authority.<sup>9</sup> We find, therefore, that they are supervisory employees within our customary definition and they will therefore be excluded as such.

*Corbett, Baccarini, Bradshaw, and Porter*, on the other hand, work with and direct small crews, spending the major portion of their time in manual labor. They have neither the power to effect nor the power to recommend hiring, discharging, or disciplining of employees. These men are, in our opinion, production and maintenance employees whose superior experience enables them to guide others in the performance of their work. The minor supervisory functions they perform do not warrant their exclusion from the unit.<sup>10</sup>

We find that all maintenance and production employees of the Company, excluding clerical and technical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommended such action<sup>11</sup> 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. The Union requests that the designation of its local be carried 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,

<sup>9</sup> See *Matter of Stacy Bros. Gas Construction Company*, 54 N. L. R. B. 651.

<sup>10</sup> See footnote 9, *supra*.

<sup>11</sup> This is the same unit established by the Board in *Matter of The Boardman Co.*, footnote 3, *supra*.

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 The Boardman Co., Oklahoma City, Oklahoma, 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 Sixteenth 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 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 Steelworkers of America, Local 2561, CIO, or by International Association of Bridge, Structural and Ornamental Iron Workers, Shopman's Local 546, AFL, for the purposes of collective bargaining, or by neither.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.