

In the Matter of MILWAUKEE WELDED PRODUCTS, INC. and INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 471, A. F. OF L.

*Case No. 13-R-2028.—Decided March 8, 1944*

*Messrs. August C. Backus, Jr., and John Weiler, of Milwaukee, Wis., for the Company.*

*Mr. C. J. Mathias, of Milwaukee, Wis., and Mr. William Wachall, of West Allis, Wis., for the Iron Workers.*

*Mr. Roman H. Pitz, of Milwaukee, Wis., and Mr. Joseph Wojcik, of Waukesha, Wis., for the Weldors.*

*Mr. Max M. Goldman, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Bridge, Structural and Ornamental Iron Workers, Local 471, affiliated with American Federation of Labor, herein called the Iron Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Milwaukee Welded Products, Inc., West Allis, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Bernard Cushman, Trial Examiner. Said hearing was held at Milwaukee, Wisconsin, on December 7, 1943. At the hearing the Trial Examiner granted a motion of Wisconsin Welders Association of Milwaukee County, Local 67, affiliated with the United Brotherhood of Weldors, Cutters and Helpers of America, herein called the Weldors, to intervene. The Company, the Iron Workers, and the Weldors 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.

55 N. L. R. B., No. 58.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Milwaukee Welded Products, Inc., a Wisconsin corporation, is engaged in the fabrication of steel products, such as hydraulic hoists, water tanks, and underground tanks, at West Allis, Wisconsin. In the manufacture of its products the Company uses finished steel plates and sheets, approximately 90 percent of which is purchased by the Company and shipped to the plant from points outside the State of Wisconsin. The value of such materials so purchased during the year 1942 was approximately \$72,000. The sales of the Company during the same period amounted in value to approximately \$200,000, of which approximately 5 percent was sold and shipped to points outside the State of Wisconsin.

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

### II. THE ORGANIZATIONS INVOLVED

International Association of Bridge, Structural and Ornamental Iron Workers, Local 471, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Wisconsin Welders Association of Milwaukee County, Local 67, affiliated with the United Brotherhood of Weldors, Cutters and Helpers of America, is a labor organization admitting to membership employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

On July 12, 1943, a collective bargaining contract was entered into between the Company and the Weldors for a period of 1 year covering the welders, cutters, and their helpers in the Company's employ. Five or six days later, the parties agreed upon the terms of a new contract for a term of 1 year from August 1, 1943, to supersede the first, which differed from the earlier instrument in that it established new wage rates and certain objective standards of proficiency for the classification and wages of welders.<sup>1</sup> On July 28, 1943, the Iron Workers

<sup>1</sup> The witnesses referred to this contract as an amendment or clarification of the contract of July 12, 1943. Assuming *arguendo* that the second instrument is only a modification of the first, that fact *per se* would not render that contract effective as a bar to this proceeding. See *Matter of Philadelphia Dairy Products Co., Inc.*, 36 N. L. R. B. 737; *Matter of Bucyrus-Erie Co.*, 41 N. L. R. B. 939

notified the Company that it represented a majority of the Company's employees, including welders, cutters and their helpers, and requested recognition as the exclusive bargaining representative of these employees. The Company refused to grant such recognition because of its contract with the Weldors.

The Weldors claims that its second contract, which is dated August 1, 1943, was executed July 26, 1943, and asserts that either its first or second contract operates as a bar to this proceeding insofar as the Company's welders, cutters and helpers are concerned. The testimony concerning the date of the execution of the second contract is conflicting and contradictory. In resolving this conflict, we find, in accordance with the principle that the date of the signing may be presumed from the purported date of the document,<sup>2</sup> that it was executed on August 1, 1943. Since the first contract was superseded by negotiations for the second,<sup>3</sup> and has now expired, and since the Iron Workers' claim was made prior to the time the second contract was executed, we find, in accordance with our usual practice, that neither contract constitutes a bar to a determination of representatives at this time.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Iron Workers represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</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 Iron Workers seeks a production and maintenance unit, excluding clerical and supervisory employees. The Weldors contends that the welders, cutters, and their helpers, excluding supervisors, constitute a separate unit appropriate for collective bargaining. The Company's position accords with that of the Iron Workers.

The Company conducts its business of steel fabricating in a plant which consists of one room about 200 feet long and 80 feet wide. All the employees are under the supervision of the plant superintendent and his assistant. In the process of manufacture, the raw materials, steel plates, and sheets, are first marked for size by the lay-out man. Then the machine operators cut the materials to size with shears and

<sup>2</sup> See 9 *Wigmore on Evidence* (3d ed.) 436.

<sup>3</sup> See *Matter of Port Costa Packing Company*, 46 N. L. R. B. 931.

<sup>4</sup> See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

<sup>5</sup> The Regional Director reported that the Iron Workers submitted 14 application cards, which bore apparently genuine signatures; that the names of 13 persons appearing on the cards were listed on the Company's pay roll of September 25, 1943, which contained the names of 20 employees in the appropriate unit; and that the cards were all dated during July 1943. The Weldors relies on its contract as evidence of its interest.

cut out slots with an acetylene torch,<sup>6</sup> or punch holes' with the drill press machines. They then shape the product with the breaking machine. The parts so prepared are fitted together and welded into a complete unit by the welders with the assistance of their helpers. After the welding process the product is ground, cleaned, painted, and prepared for shipment by another group of helpers.

The Company employs about 11 welders who spend substantially all of their time at welding.<sup>7</sup> Although they work in many parts of the plant under the general supervision of the plant superintendent and his assistant, their function is a distinct step in the fabricating process and is not merged with the work of other employees in the plant. The welders do all of the welding that is done in the plant. They are required to pass proficiency tests not required of other employees; and their wage scale, based upon the results of the tests, differs and is higher than that of the other employees.

It appears, therefore, that the welders, in the Company's employ constitute an identifiable group of skilled employees performing specialized functions. Moreover, the history of bargaining at the plant, although it is brief, demonstrates the feasibility of their separate representation. We are of the opinion that the welders may properly constitute a separate bargaining unit if they so desire.<sup>8</sup> On the other hand, the closely integrated character of the Company's operations indicates the propriety of including the welders in a plant-wide unit. Accordingly, we shall make no present determination as to the appropriate unit, but shall first ascertain the desires of the employees involved, to be expressed in separate elections hereinafter directed.

There remains for consideration a question concerning the composition of the voting groups. The Company and the Weldors seek the exclusion of the assistant plant superintendent; the Iron Workers would include him in its proposed bargaining unit. This employee receives a higher rate of pay than do the production men, he does very little manual labor, and spends most of his time performing supervisory duties. He has authority to recommend hire and discharge, and he is the only person other than the superintendent who has supervisory status at the plant. We find that the assistant plant superin-

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<sup>6</sup> These employees, unlike the employee who uses an acetylene torch to do frame cutting, are not covered by the Weldors' contract.

<sup>7</sup> Occasionally, they help unload trucks and perform other miscellaneous tasks around the plant.

<sup>8</sup> See *Matter of Pope Machine Company*, 54 N. L. R. B. 262, and decisions cited therein. See also *Matter of Port Houston Iron Works*, 46 N. L. R. B. 155, in which the problem is discussed in detail. While we recognize that all of the indicia of identifiability adverted to therein are not here present, we take notice that in a plant so small as the one here involved, departmentalization and division of authority is not common. We are satisfied that the circumstances surrounding the work of the welders employed by the Company satisfy the general rule which is the basis of the *Port Houston* decision.

tendent is a supervisory employee, and accordingly we shall exclude him from participation in the elections hereinafter directed. The parties agreed at the hearing to exclude the shipping clerk. Since there appears to be no reason for departing from this agreement, we shall exclude the shipping clerk from the voting groups.

We shall direct that separate elections be held among the employees of the Company in the following groups, excluding from each group all office and clerical employees, the shipping clerk, the plant superintendent and his assistant, 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, 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: (1) welders, cutters, and their helpers; and (2) the remaining production and maintenance employees. Upon the results of these elections will depend in part our determination of the appropriate 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 Milwaukee Welded Products, Inc., West Allis, Wisconsin, 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 Thirteenth 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 following groups, 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:

(1) All welders, cutters, and their helpers, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be repre-

sent by Wisconsin Welders Association of Milwaukee County, Local 67, affiliated with the United Brotherhood of Weldors, Cutters and Helpers of America, or by International Association of Bridge, Structural and Ornamental Iron Workers, Local 471, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither;

(2) All remaining production and maintenance employees of the Company, excluding office and clerical employees, the shipping clerk, the plant superintendent and his assistant 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, to determine whether or not they desire to be represented by International Association of Bridge, Structural and Ornamental Iron Workers, Local 471, affiliated with the American Federation of Labor, for the purposes of collective bargaining.