In the Matter of Buffalo Tank Corporation and Local 576 of the International Association of Bridge, Structural, and Ornamental Iron Workers (A. F. of L.)

Case No. 3-R-758.—Decided May 23, 1944

Kenefick, Cooke, Mitchell, Bass & Letchworth, by Mr. LeGrand F. Kirk, of Buffalo, N. Y., for the Company.

Mr. George Mintzer, of Buffalo, N. Y., for the Iron Workers.
Mr. Ray Oberholtzer, of Buffalo, N. Y., for the Boilermakers.
Mr. John F. Gunderman, of Buffalo, N. Y., for the Welders.
Mr. Robert E. Tillman, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTIONS

## STATEMENT OF THE CASE

Upon petition duly filed by Local 576 of the International Association of Bridge, Structural and Ornamental Iron Workers (A. F. of L.), herein called the Iron Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Buffalo Tank Corporation, Lackawanna, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Peter J. Crotty, Trial Ex-Said hearing was held at Buffalo, New York, on April 6, The Company, the Iron Workers, and Local No. 7, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, A. F. of L., herein called the Boilermakers, and Associated Welders of Western New York, Inc., herein called the Welders, 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 rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

56 N L. R B., No. 154.

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

## FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Buffalo Tank Corporation, a New York corporation, is engaged at two plants in the manufacture of tanks and steel plate products. Only its Lackawanna, New York, plant is involved in the present proceeding. During the year 1943, the Company used at its Lackawanna plant raw materials having a value in excess of \$100,000, of which more than 40 percent represents the value of materials shipped to the plant from points outside the State of New York. During the same period, the Company manufactured at its Lackawanna plant finished products having a value in excess of \$200,000, of which more than 40 percent represents the value of products shipped from the plant to points outside the State of New York.

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

#### II. THE ORGANIZATIONS INVOLVED

Local 576 of the International Association of Bridge, Structural and Ornamental Iron Workers is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Local No. 7, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Associated Welders of Western New York, Inc., is an unaffiliated labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On January 28, 1944, the Iron Workers mailed a letter to the Company in which it claimed to represent a majority of the Company's employees and requested a conference to discuss bargaining relations. The Company replied, in effect, that it would not bargain with any labor organization not certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that each of the labor organizations represents a substantial number of employees in the unit it contends to be appropriate.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> The Field Examiner stated that the Iron Workers submitted to him 38 authorization cards, and that 34 of the cards bore names of persons whose names appeared on the Com-

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

## A. The contentions of the parties

The Iron Workers request a unit of all production and maintenance employees at the Company's Lackawanna plant, including the inspector, but excluding the janitor, watchmen, the timekeeper, office and clerical employees, and supervisory employees.

The Boilermakers agrees that the unit requested by the Iron Workers is appropriate with the additional inclusion of three outside employees.

The Welders contends that welding employees should not be included in a production and maintenance unit but should be found to constitute a separate unit.

The Company takes a neutral position, but suggests the exclusion of the inspector.

# B. Description of the plant; the proposed production and maintenance unit

The Lackawanna plant consists of a single 1-floor building without partitions, housing a total of approximately 40 production and maintenance employees, including 8 welders. Because of its small size, it is not departmentalized and operates on a single shift. Over the entire plant is a supérintendent, and below him 2 supervisors. There are no other regular supervisory employees. The plant has no moving production line, but the various operations performed therein are clearly interrelated and interdependent. These facts would clearly support a finding that a single production and maintenance unit is appropriate. The Board, however, has frequently postponed its determination of the appropriate unit pending a reflection of the desires of employees sought to be set off in a separate unit, where counterbalancing considerations were present indicating the appropriateness of a separate craft unit. As is noted hereinafter, the instant case presents such factors in favor of a separate unit of welders. Accordingly, no final determination as to the appropriateness of a single production and maintenance unit will be made at this time.

pany's pay roll for February 26, 1944, which listed 40 employees in the unit claimed to be appropriate by the Iron Workers. He stated that the Boilermakers submitted to him 21 authorization cards, 19 of which bore names of persons whose names appeared on the above-mentioned pay roll, which listed 43 employees in the unit which the Boilermakers claimed to be appropriate. He further stated that the Welders submitted to him 6 authorization cards, all of which bore names of persons whose names appeared on the above-mentioned pay roll, which listed 8 employees in the unit alleged to be appropriate by the Welders.

As indicated above, the Boilermakers contends that outside employees should be included in any production and maintenance unit found to be appropriate. The Company has three employees who spend about 95 percent of their working time traveling to customers' plants to make installations and to service boilers. The remainder of the time they are engaged in production at the plant. These employees are covered at present by a contract between the Company and the Boilermakers. In view of this contract and the nature of their duties, we shall not include the outside employees in the voting groups hereinafter established.

As previously stated, the Company suggests that its inspector be excluded. Apparently the basis for this position is the belief that the inspector's work is confidential and managerial in nature. The inspector inspects welding, fitting, and the completed articles to see that they are up to standard. According to the superintendent of the Company, if either of the supervisors were absent, the inspector would take his place and exercise the power to recommend hiring, discharging, transfer, and promotion. In view of the inspector's designation by the Company as what may be termed a substitute supervisor, we shall exclude him from the voting groups.

## C. The Welders' proposed unit

The 8 welders employed by the Company fuse steel plates and forms together by arc welding, and also perform any needed maintenance welding. The Company also employs burners whom the Welders does not desire to include. In addition, there are 6 to 12 employees who may assemble plates for the welders and tack weld them into position. The Welders does not desire to include tack welders in its proposed unit. The Company's welders are not only the most skilled craftsmen in the entire plant, but aside from the layout men, appear to be the only highly skilled employees. Their wage rate is between 48 and 58 cents higher than that of any other group. Rarely, if ever, do they perform any work other than welding. All of them have been certified in welding tests.

The Company's welders have no shop of their own, nor is their work confined to any one section of the plant. Moreover, they do not have a separate supervisor. Nevertheless, considering the small size of the plant, these facts do not alter the conclusion that the Company's welders constitute a clearly identifiable group of skilled employees performing specialized functions.<sup>2</sup> We are of the opinion that the considerations in favor of an industrial unit are balanced by those

<sup>&</sup>lt;sup>2</sup> See Matter of Milwaukee Welded Products, Inc., 55 N. L. R. B 321, and Matter of Pope Machine Company, 54 N. L. R. B, 262.

tending to favor a separate unit of welders, so that the welders could function as a separate unit for the purposes of collective bargaining, or be included in a single production and maintenance unit. Under the circumstances, our determination of the appropriate unit, or units, will depend in part upon the results of the elections hereinafter directed.

## D. The jurisdictional dispute

The Iron Workers and the Boilermakers, both of whom are affiliated with and subject to the jurisdiction of the American Federation of Labor are seeking to represent substantially the same employees of the Company. The Boilermakers contends that a jurisdictional dispute is thus presented and that the Iron Workers' petition should therefore be dismissed.<sup>3</sup> While we have on occasion dismissed proceedings involving jurisdictional disputes between two unions on the theory that an issue was raised which the parent organization was competent to decide, we have never done so where a third union, not a party to the jurisdictional dispute, was also seeking to represent the employees over whom the dispute had arisen.4 Here, the Welders is not a party to the jurisdictional dispute and seeks to represent some of the employees involved in the controversy. We shall, therefore, determine the question concerning representation despite the jurisdictional dispute between the Iron Workers and the Boilermakers. The names of both the Iron Workers and the Boilermakers shall be placed on the ballots in the elections hereinafter ordered.5

# E. Concluding findings

In view of our findings with respect to the welders employed by the Company, we shall make no final determination at this time of the unit, or units. We shall direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among the employees in the following voting groups who were employed during the pay-roll period immediately preceding the date

<sup>\*</sup>There is in evidence an agreement between the parent bodies of the Iron Workers and the Boilermakers, defining the respective jurisdictions of the two organizations. We do not feel called upon to interpret this document and determine whether it covers construction work alone or both construction work and production. The Iron Workers and Boilermakers are in dispute on the point and it will suffice to note here that the agreement is not clear on its face.

<sup>&</sup>lt;sup>4</sup> See Matter of Long-Bell Lumber Company, 16 N L R B 892, Matter of Campbell Wyant & Cannon Foundry Co, 32 N L R B 416; Matter of Truscon Steel Company, 33 N L R B 61; Matter of Weyerhaeuser Timber Company, Klamath Falls Branch, 42 N L R B 499; and Matter of United States Gypsum Company, 46 N L R B 23.

If A so a result of the elections ordered in this proceeding, the Tion Workers or the Boilermakers is certified as the representative of employees of the Company, our certification will not be a determination that such A F of L affiliate is the union authorized by the A. F. of L to assert jurisdiction over such employees. It will merely be a holding that such A. F of L affiliate is the exclusive representative of employees of the Company in an appropriate unit for the purposes of collective bargaining.

of our Direction of Elections, subject to the limitations and additions set forth therein: (1) all welders and welder apprentices, <sup>6</sup> excluding burners, tack welders, 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, to determine whether they desire to be represented by the Welders, the Iron Workers, the Boilermakers, or none; and (2) all remaining production and maintenance employees, excluding the janitor, watchmen, timekeeper, office and clerical employees, outside employees, the inspector, 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, to determine whether they desire to be represented by the Iron Workers, the Boilermakers, or neither.

Upon the results of these elections will depend, in part, our determination of the appropriate unit, or units, of production and maintenance employees.

# 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 Buffalo Tank Corporation, Lackawanna, New York, 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 of Elections, under the direction and supervision of the Regional Director for the Third 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 employees who were employed by the Company during the pay-roll period immediately preceding the date of this Direction of Elections, 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 elections:

1. All welders and welder apprentices, excluding burners, tack welders, and all supervisory employees with authority to hire, pro-

Although the Company at present has no welder apprentices, the Welders expressed a desire that provision be made for the inclusion of possible future apprentices. This request is reasonable and is hereby granted.

mote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the Associated Welders of Western New York, Inc., or by Local 576 of the International Association of Bridge, Structural and Ornamental Iron Workers (A. F. of L.), or by Local No. 7, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, A. F. of L., for the purposes of collective bargaining, or by none; and

2. All production and maintenance employees, excluding the janitor, watchmen, timekeeper, office and clerical employees, outside employees, the inspector, all employees included in Group 1, above, 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, to determine whether they desire to be represented by Local 576 of the International Association of Bridge, Structural and Ornamental Iron Workers (A. F. of L.), or by Local No. 7, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, A. F. of L., for the purposes of collective bargaining, or by neither.

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