

In the Matter of BROWN FENCE AND WIRE COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1819

Case No. 7-R-1751.—Decided July 20, 1944

Mr. H. H. Foster, of Adrian, Mich., for the Company.  
Mr. Henry J. Murphy, of Detroit, Mich., for the I. A. M.  
Mr. S. P. Tobin, of Detroit, Mich., for the Iron Workers.  
Mr. David V. Easton, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, Lodge 1819, herein called the I. A. M., alleging that a question affecting commerce had arisen concerning the representation of employees of Brown Fence and Wire Company, Adrian, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Weiner, Trial Examiner. Said hearing was held at Adrian, Michigan, on June 13, 1944. The Company, the I. A. M., and International Association of Bridge, Structural and Ornamental Iron Workers, herein called the Iron Workers, 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 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

Brown Fence and Wire Company, an Ohio corporation, is engaged in the manufacture and sale of seamless steel tubing, aluminum sheet, and woven iron fence. For this purpose it operates a plant located at Adrian, Michigan, with which we are concerned in this proceeding.

During the 3 months' period ending March 31, 1944, total purchases of raw materials for use at this plant were valued at approximately \$793,000, of which about 99 percent originated in States other than the State of Michigan. During the same period, total sales of products finished at this plant amounted in value to approximately \$916,000, of which approximately 66 $\frac{2}{3}$  percent represents shipments to points outside the State of Michigan.

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

## II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Lodge 1819, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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.

## III. THE QUESTION CONCERNING REPRESENTATION

By letter dated March 22, 1944, the I. A. M. requested recognition from the Company as the collective bargaining representative of certain of its employees. The Company replied by letter dated March 25, 1944, refusing in effect, to grant such recognition, in the absence of evidence that the I. A. M. represents a substantial majority of its employees.

On September 1, 1942, the Company, the Iron Workers, and its Local 641, executed a collective bargaining agreement covering, generally, the Adrian plant's production and maintenance employees. This contract provides for a term of 1 year and automatic renewal from year to year in the absence of a 4 months' notice to amend or terminate given by either party<sup>1</sup> prior to any anniversary date. In 1943 the contract was renewed for another year. The Iron Workers contends that it is a bar to the instant proceeding. In view of the fact that the I. A. M. apprised the Company of its claim to representation prior to the operative date of the renewal clause for the current year, we find the contention of the Iron Workers to be without merit.<sup>2</sup>

<sup>1</sup> The Iron Workers and its Local 641 were considered in this contract as a single party, although both were separate signatories.

<sup>2</sup> We note from the record that the Adrian plant's employees who were members of Local 641 voted unanimously on April 12, 1944, to dissolve that organization and to affiliate with the I. A. M.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the I. A. M. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 parties agree that all production and maintenance employees of the Company's Adrian plant, excluding foremen, supervisors who do not use tools, instruments, or machinery, clerical employees, technicians, and erection, installation, and construction employees, constitute an appropriate unit. A disagreement exists with respect to employees classified by the Company as Supervisors, and shop timekeepers (dispatchers). Both labor organizations desire to include Supervisors, whereas the Company desires to exclude them. The I. A. M. seeks the inclusion of shop timekeepers (dispatchers), whereas the Iron Workers desires that they be excluded from the unit; the Company takes no position with respect to these employees.

The record indicates that Supervisors normally have charge of groups ranging from 10 to 25 employees and that they are expected to make recommendations affecting the status of such employees.<sup>4</sup> We find that Supervisors are supervisory employees within the meaning of our customary definition, and we shall exclude them.

Shop timekeepers (dispatchers) record the starting and finishing time of various jobs performed in certain of the Adrian plant's departments, as well as the quantity of work produced in these departments. In addition to these duties, these employees make and keep other records, all of which are directed toward the determination of costs. Besides preparing these records, they are expected to see that work flows through the various departments to which they are assigned in a certain prescribed order. Although their work is clerical in nature, most of their time is spent among the production and maintenance employees, and their duties have nothing to do with fixing the rates of compensation for such employees. We shall include shop timekeepers (dispatchers) within the unit.<sup>5</sup>

We find that all production and maintenance employees at the Adrian plant of the Company, including shop timekeepers (dispatchers), but excluding all other clerical employees, technicians, erec-

<sup>3</sup> The Regional Director reported that the I. A. M. submitted 207 designation cards, of which 169 contained names identical with names appearing upon the Company's pay roll of May 2, 1944. This pay roll contained 310 names.

The Iron Workers relies upon its contract as evidence of its interest in this proceeding.

<sup>4</sup> The weight these recommendations are given depends upon the Company's appraisal of the judgment of the particular supervisor concerned. However, it is clear that the making of recommendations is part of the duties of supervisors.

<sup>5</sup> *Matter of Kaiser Company, Inc., Iron and Steel Division*, 53 N. L. R. B. 880, and cases cited therein.

tion, installation, and construction employees, foremen, supervisors who do not use tools, instruments, or machinery, Supervisors, 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

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.

#### 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 Brown Fence and Wire Company, Adrian, Michigan, 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 Seventh 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 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 International Association of Machinists, Lodge 1819, affiliated with the American Federation of Labor, or by International Association of Bridge, Structural and Ornamental Iron Workers, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

**MR. GERARD D. REILLY** took no part in the consideration of the above Decision and Direction of Election.