

In the Matter of INDIANA BRIDGE COMPANY, INC. and UNITED STEELWORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 9-R-1448.—Decided July 26, 1944

Bracken, Gray and DeFur, by Mr. Myron H. Gray, of Muncie, Ind., for the Company.

Mr. H. W. Alderman, of Muncie, Ind., for the USA.

Mr. George McMahon, of Muncie, Ind., for the Hod Carriers.

Mr. Samuel P. Tobin, of Detroit, Mich., for the Iron Workers.

Mr. Robert Silagi, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, herein called the USA, alleging that a question affecting commerce had arisen concerning the representation of employees of Indiana Bridge Company, Inc., Muncie, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Muncie, Indiana, on June 22, 1944. The Company, the USA, Local 1112, International Hod Carriers', Building and Common Laborers' Union of America, herein called the Hod Carriers, and International Association of Bridge, Structural and Ornamental Iron Workers, herein called the Iron Workers, 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.

At the hearing the Company moved to dismiss the petition. For the reasons stated hereinafter, the motion is denied. 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

Indiana Bridge Company, Inc., is an Indiana corporation maintaining its place of business in Muncie, Indiana. The Company is engaged in the fabrication and erection of structural steel. During the past year the Company purchased raw materials amounting to more than \$50,000, which consist of steel beams, channels, angles, and plates. Ninety percent of these raw materials was shipped to the Company's plant from points located outside the State of Indiana. During the same period the Company's gross sales amounted to approximately \$200,000, of which 50 percent represents shipments made to points outside the State of Indiana. About half of the steel which the Company fabricates is erected by its own employees, both within and outside the State of Indiana.

For the purpose of this hearing, the Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

Local 1112, International Hod Carriers', Building and Common Laborers' Union of America, and International Association of Bridge, Structural and Ornamental Iron Workers are labor organizations affiliated with the American Federation of Labor and admit to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 10, 1943, a consent election was held among the Company's production and maintenance employees with the Iron Workers and the USA appearing on the ballot. Neither union received a majority in the election and a run-off election was held 6 days later. Inasmuch as the run-off election resulted in a tie vote, no majority bargaining representative was designated. In February 1944, the Hod Carriers requested recognition from the Company as the collective bargaining agent of its employees. When the Company refused this request, the Hod Carriers filed a petition with the Board. Subsequently the Hod Carriers withdrew its petition and on May 16, 1944, the USA filed the petition which is the basis of the present proceeding.

The Company moved to dismiss the petition as being premature, in that less than 1 year has elapsed since the last election was held among the employees of the Company. Another election at this time, so the Company argues, with its attendant membership campaigns carried on by rival unions, will cause much dissension among the employees, thus seriously interfering with production. In the interests of stability of collective bargaining relations, the Board has, in the absence of unusual conditions, refused to conduct an election to determine a collective bargaining representative within the period of 1 year from a prior certification.¹ This policy, however, has never had any application to cases where an election held less than 1 year prior to the filing of a petition for certification of representatives has not resulted in the selection of a majority representative.²

A statement of the Trial Examiner made at the hearing indicates that each union represents a substantial number of employees in the unit hereinafter found appropriate.³

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 Company's activities are twofold; it not only fabricates structural steel but also erects the steel upon building sites. For the former operation, the Company employs 50 production and maintenance employees at its plant in Muncie, whereas 28 erectors perform the latter operation at various places in and adjoining the State of Indiana. The erectors are organized by a local of the Iron Workers which has had a contract with the Company for the past 7 years.

Except for certain individuals who are claimed to be supervisors, the parties are substantially agreed upon the following unit: "all production and maintenance employees at the Muncie plant, but excluding erectors, office, clerical, and temporary employees, truck

¹ See *Matter of Monarch Aluminum Mfg. Company*, 41 N. L. R. B. 1 and cases cited therein.

² See *Matter of Automatic Products Company*, 40 N. L. R. B. 941.

³ The Trial Examiner compared the Company's pay roll of June 22, 1944, with authorization cards submitted by the 3 unions. Of the 50 production and maintenance employees whose names appeared on said pay roll, the USA had cards for 14, the Iron Workers had cards for 21, and the Hod Carriers had cards for 22 employees. Six employees had signed cards for all 3 unions; 15 had memberships in 2 of the unions; 5 had signed cards only for the USA; 4 had signed cards only for the Iron Workers; and 4 had signed cards only for the Hod Carriers.

The Company also contends, in moving to dismiss the petition, that the petitioner does not represent a substantial part or a majority of the employees in the unit. This objection has no merit for we have often held that it is sufficient for the petitioning union to make a substantial showing, adequate to raise the probability that it may be selected by a majority. See *Matter of Semon Bache and Company*, 39 N. L. R. B. 1216; *Matter of H. G. Hill Stores, Inc.*, 39 N. L. R. B. 874; also *Matter of Budd Wheel Company*, 52 N. L. R. B. 666.

drivers, the superintendent and assistant superintendent." While the Company does not deny the appropriateness of a separate unit for its production and maintenance employees, it alleges that such a unit can be appropriate only if represented by the same union or a union affiliated with the one which holds collective bargaining rights for the erectors. This contention is based upon the theory that the production and maintenance employees who fabricate the steel have a common interest with the employees who erect the steel, and rival unions representing each group will only cause confusion and decreased production. We find little merit, however, in the Company's contention.⁴ We note, moreover, that only half a year ago the Company acquiesced in a consent election agreement for its production and maintenance employees whereby they were given an opportunity to designate as their representative either the union which had a contract for the erectors, or a rival union.

Fred Haney, Joseph Jenkinson, Conley Jester, and Joseph Brown. There remains for consideration the unions' contention that these four employees be excluded from the unit on the ground that they are supervisors; the Company opposes their exclusion. Haney is in charge of loading cars and has one helper permanently assigned to him and occasionally has several men who temporarily assist him. He works along with the men. Although he regards himself as a group leader, he makes no recommendations to the superintendent regarding the employees' work. Jenkinson is the chief maintenance man or chief repair man. He has one helper permanently assigned to assist him. Jenkinson received \$1.08 per hour; his helper received 90 cents per hour. Jester is a lay-out man who works with the men whom he instructs. He has from one to five men helping him. He makes no reports to the superintendent with respect to the quality of the men's work. Brown is an inspector who had formerly worked as a foreman when the Company operated two shifts. Since the discontinuance of the second shift about a year ago, he has worked as an inspector of materials. While he has authority to reject improper work, he makes no reports on the employees, but simply marks the defective work for correction. The Company points out that its plant is relatively small and so constructed that the superintendent can oversee the entire floor space from his office, and that the number of production and maintenance employees is small enough for the superintendent to know personally each employee and the quality of his work. The superintendent does not require nor expect any of the employees mentioned above to make any reports to him relative to the quantity or quality of work produced by the production and maintenance em-

⁴ See *Matter of Ball Brothers Company*, 52 N. L. R. B. 775, and cases cited therein.

ployees. Upon consideration of these facts, we are of the opinion that none of the enumerated employees falls within our customary definition of a supervisory employee.

We find that all production and maintenance employees in the Company's Muncie, Indiana, plant, but excluding erectors, office, clerical, and temporary employees, truck drivers, the superintendent and assistant superintendent, 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, as amended, it is hereby

DIRECTION that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Indiana Bridge Company, Inc., Muncie, Indiana, 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 Ninth 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 the 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 they desire to be represented by United Steelworkers of America, affiliated with

the Congress of Industrial Organizations, by Local 1112, International Hod Carriers', Building and Common Laborers' Union, 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 no union.

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