

IN the Matter of MOORE DRY DOCK COMPANY and TECHNICAL ENGINEERS', ARCHITECTS' AND DRAFTSMEN'S UNION, LOCAL 89, A. F. OF L.

Case No. 20-R-1067.—Decided August 26, 1944

Brobeck, Phleger & Harrison, by Mr. M. B. Plant, of San Francisco, Calif., for the Company.

Mr. J. A. Johnson, of Oakland, Calif., for the Union.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Technical Engineers', Architects' and Draftsmen's Union, Local 89, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Moore Dry Dock Company, Oakland, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Gerald P. Leicht, Trial Examiner. Said hearing was held at San Francisco, California, on July 7 and 8, 1944. The Company and the Union appeared, participated; and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Moore Dry Dock Company, a California corporation, maintains its principal office and place of business in Oakland, California, where it

¹ Office Workers Union, Local 20744, A. F. of L., although served with notice, did not appear and informed the Board that it claimed no interest among the employees in the unit for which the Union is petitioning.

is engaged in the construction and repair of oceangoing vessels and in the business of steel fabrication. The principal raw materials used by the Company in its operations are steel pipe, plates, shapes, bars, and sheets; copper sheets, tubing, and pipe; brass sheets, bars, tubing, and pipe; steel, iron, and bronze castings; and forging ingots, forging billets, and lumber. During the past year, the Company purchased raw materials having an approximate value of \$35,000,000, of which 85 percent was shipped to the plant from points outside the State of California. During the same period, the Company constructed ships having an approximate value of \$176,000,000, and delivered all of them to agencies of the United States Government.

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

II. THE ORGANIZATION INVOLVED

Technical Engineers', Architects' and Draftsmen's Union, Local 89, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union requested recognition from the Company as the collective bargaining representative of the latter's technical and engineering employees. The Company, in effect, refused to extend recognition in the absence of certification by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit alleged to be appropriate.²

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 is petitioning for a unit of all employees of the Company engaged in technical and engineering work, including specifically those listed in Appendix A, attached hereto, but excluding the chief engineer, all other supervisory employees with power to hire or discharge, and all non-technical clerical and office employees.³

² The Field Examiner reported that the Union submitted 65 designation cards, and that there were approximately 145 employees in the unit alleged to be appropriate. Evidence adduced at the hearing indicates that the number of employees in the unit hereinafter found appropriate is approximately 244.

³ The Company has collective bargaining contracts with 4 labor organizations representing various groups of its production and maintenance employees. Employees in 8 out of the 22 departments of the Company not presently covered by the bargaining contracts would be included in the unit sought by the Union.

The Company opposes the unit proposed by the Union only to the extent that the Union seeks the inclusion of the following categories of employees: senior technical clerks and technical clerks; assistant blueprint machine operators in the Drafting Department; employees in the Estimating Department; employees in the Progress and Statistics Department; the assistant chief planning engineer in the Production Control and Planning Department; and the assistant chief systems and methods engineer in the Systems and Methods Department.

Senior technical clerks and technical clerks: These two classifications were established with the approval of the National War Labor Board, as set forth in its ruling issued on February 14, 1944, and amended on March 23, 1944. One or both of the classifications are found in six of the eight departments in which the Union claims employees in its proposed unit, and are also found in five other departments.⁴ The work of employees in the two classifications varies considerably from department to department. The Company contends that such employees are essentially clerical rather than technical personnel. In support of its contention, it asserts that the classifications were established solely to provide greater range for grade promotion of clerks; that changes in classification resulted in no change in functions; that none of the employees having the classifications requires engineering training or experience; and that there are instances where general clerks perform the same work as senior technical clerks and technical clerks.

The record indicates that generally the senior technical clerks and technical clerks perform duties of an essentially clerical nature. In recognition of the difference in interests, backgrounds, and functions between technical and professional employees, on the one hand, and office and clerical employees, on the other, we have declined to include the two groups in one unit where there has been opposition from one of the parties.⁵ In the present proceeding, however, the several groups of technical and engineering employees whom the parties agree to include in the unit possess such varying degrees of skill, training, and experience that a clear-cut line of demarcation cannot readily be drawn between the engineering and technical employees, the technical and semi-technical employees, and the semi-technical and associated nontechnical employees. The senior technical clerks and technical clerks whom the Union would include in the unit are in close association with the technical and engineering employees and perform work which is closely related to the work of the latter. Although a

⁴ There are approximately 131 senior technical clerks and technical clerks employed by the Company, of whom 117 are in departments which the Union claims to be technical and engineering departments.

⁵ See *International Harvester Company, West Pullman Works*, 56 N. L. R. B. 1111, and cases cited therein.

technical background is not required of senior technical clerks and technical clerks, it is desirable, and considerable technical knowledge is acquired in the performance of their work or in special study courses in which many of them have enrolled. These factors clearly distinguish the senior technical clerks and technical clerks in question from ordinary office and clerical employees. We conclude that these facts do not require an application of our usual policy. In view of this conclusion, and the further fact that no union is seeking at this time to represent the Company's clerical employees,⁶ we shall include the senior technical clerks and technical clerks in the unit.⁷

Assistant blueprint machine operators: The Company has two blueprint machines in its Drafting Department. Each machine has one or two operators, an assistant operator, and trimmers. The operators are classified as senior technical clerks or technical clerks, and, in accordance with our findings above, are included within the unit as such. Although the two assistant operators and the trimmers are classified as general clerks, since their duties are similar or closely allied to those of the operators, we shall also include them in the unit.

Employees in the Estimating Department: The employees in this department include the chief estimator, the assistant chief estimator, eight estimators, and two junior estimators. The Union does not seek to include in its proposed unit the chief estimator who is the head of the department, but does claim all other employees. The assistant chief estimator normally supervises a group of estimators. He has effective power to recommend hiring and discharge and, in the absence of the chief estimator, is in complete charge of the department with full authority to hire and discharge. The assistant chief estimator is clearly a supervisory employee within our customary definition and we shall, therefore, exclude him from the unit.

The estimators go aboard ships about to be repaired and make an estimate of the work to be done and the cost involved. The estimate forms the basis for the Company's bid on the repair job. The Company contends that the estimators are performing a management function by virtue of their contact, on board ship, with officers and other representatives of the ship owners and their part in formulating bids. However, we do not consider the functions of estimators to be such as would clothe them with managerial status. The record is clear that estimators must have technical knowledge and training, and are usually transferred from engineering or drafting departments. With their technical background, estimators clearly have interests more akin to those of the technical and engineering employees than to those of

⁶ As indicated in footnote 1, *supra*, Office Workers Union, Local 20744, A F of L, expressly indicated that it had no present interest in the employees claimed by the Union.

⁷ See *Matter of Chrysler Corporation, et al*, 55 N L R. B. 1039.

other groups of employees. We shall, therefore, include estimators in the unit. Since junior estimators are differentiated from estimators only in matter of degree, we shall include them also.

Employees in the Progress and Statistics Department: In this department, the Union seeks to represent progress estimators and statistical draftsmen. The Company would exclude the former because they are not employed in an engineering capacity, and would exclude the latter because they are not engaged in marine drafting. The progress estimators go on board ships which are under repair or construction to make an estimate of the amount of work which has been completed. They do this by checking off from a list those items which have been installed. Occasionally they have recourse to blueprints to learn the location of specific installations. We are of the opinion that the reasons which impelled our inclusion of senior technical clerks and technical clerks in the unit are equally applicable to progress estimators. We shall, therefore, include progress estimators in the unit.

The statistical draftsmen produce statistical charts and drafts. Although their work does not involve drawing and copying plans, nevertheless, it is of a technical character and requires similar skill in that it necessitates the use of many tools used by marine draftsmen. We find that statistical draftsmen properly belong in the unit.

The assistant chief planning engineer and the assistant chief systems and methods engineers: The record indicates that the assistant chief planning engineer in the Production Control and Planning Department and the assistant chief systems and methods engineer in the Systems and Methods Department occupy positions of a supervisory status comparable to that held by the assistant chief estimator in the Estimating Department, whom we excluded above. Accordingly, we shall exclude them.

We find that all employees of the Company engaged in technical and engineering work, including, specifically, leadermen, senior draftsmen, draftsmen, junior draftsmen, assistant blueprint machine operators, and trimmers in the Drafting Department; planning engineers, planners, and draftsmen in the Production Control and Planning Department; estimators and junior estimators in the Estimating Department; surveyors, chainmen, senior draftsmen, and draftsmen in the Hull Department; senior draftsmen, draftsmen, and surveyors in the Machinery and Outfitting Department; progress estimators and statistical draftsmen in the Progress and Statistics Department; senior draftsmen and draftsmen in the Structural Steel Department; systems and methods engineers and draftsmen in the Systems and Methods Department; and all senior technical clerks and technical clerks in all the above-mentioned departments, excluding all other senior technical

clerks and technical clerks,⁸ non-technical office and clerical employees, and draftsmen chargemen, the assistant chief estimator in the Estimating Department, the assistant chief planning engineer in the Production Control and Planning Department, the assistant chief systems and methods engineer in the Systems and Methods Department, 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 therein.

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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Moore Dry Dock Company, Oakland, California, 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 Twentieth 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 or not they desire to be represented by Technical

⁸ At least one technical clerk is a teletype operator. We agree with the parties that such employee should be excluded from the unit.

Engineers', Architects' and Draftsmen's Union, Local 89, A. F. of L., for the purposes of collective bargaining.

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

APPENDIX A

Drafting Department

Leadermen

Draftsmen, Senior

Draftsmen

Draftsmen, Junior

Technical Clerks, Senior

Technical Clerks

Assistant Blue Print Machine

Operators

Production Control and Planning Department

Assistant Chief Planning Engineer

Planning Engineers

Planners

Draftsman

Technical Clerks, Senior

Technical Clerks

(Excluding the teletype operator so designated)

Estimating Department

Assistant Chief Estimator

Estimators

Estimators, Junior

Hull Department

Surveyors

Chainmen (Stadia rodmen)

Draftsmen, Senior

Draftsman

Technical Clerks

Machinery and Outfitting Department

Draftsman, Senior

Draftsmen

Surveyor

Technical Clerks, Senior

Technical Clerks

Progress and Statistics Department

Progress Estimators

Statistical Draftsmen

Structural Steel Department

Draftsmen, Senior

Draftsman

Technical Clerks, Senior

Systems and Methods Department

Assistant Chief Engineer

Systems and Methods Engineers

Draftsmen

Technical Clerks, Senior

Technical Clerks