

In the Matter of BROWN SHIPBUILDING COMPANY, INC. and SIGN & PICTORIAL PAINTERS, L. UNION #550, A. F. OF L.

In the Matter of BROWN SHIPBUILDING COMPANY, INC. and BROTHERHOOD OF RAILROAD TRAINMEN

In the Matter of BROWN SHIPBUILDING COMPANY, INC. and LOCAL NO. 5, A UNITED BROTHERHOOD OF WELDORS, CUTTERS AND HELPERS OF AMERICA, AFFILIATED WITH WELDORS AND CUTTERS, DISTRICT NO. 3

In the Matter of BROWN SHIPBUILDING COMPANY, INC. and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS & HELPERS OF AMERICA, LOCAL 469

Cases Nos. 16-R-942, 16-R-949, 16-R-960, and 16-R-980, respectively.—Decided October 14, 1944

Messrs. A. J. Wirtz and Herman Jones, of Austin, Tex., for the Company.

Mr. David R. Crockett, of Houston, Tex., for the Sign Painters.

Messrs. J. G. Wells and G. B. Anderson, of Houston, Tex., and Mr. C. H. Smith, of Fort Worth, Tex., for the B. R. T.

Mr. Bliss Daffan, of Houston, Tex., for the United.

Mr. W. A. Combs, of Houston, Tex., and Mr. Stewart E. Stephens, of Minden, La., for the Firemen.

Mr. J. P. McCollum, of Houston, Tex., for the Boilermakers and for the Welders.

Mr. Sidney Grossman, of counsel to the Board.

DECISION  
DIRECTION OF ELECTIONS  
AND  
ORDER

STATEMENT OF THE CASE

Upon the separate petitions duly filed by Sign & Pictorial Painters, L. Union #550, A. F. of L., herein called the Sign Painters; by Brotherhood of Railroad Trainmen, herein called the B. R. T.; by Local No. 5, A United Brotherhood of Weldors, Cutters and Helpers

of America, affiliated with Weldors and Cutters District No. 3, herein called the United; by International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, Local 469, herein called the Boilermakers; and by Local Union No. 150, International Brotherhood of Firemen, Oilers, Operators and Maintenance Men, A. F. of L., herein called the Firemen;<sup>1</sup> each alleging that a question affecting commerce had arisen concerning the representation of employees of Brown Shipbuilding Company, Inc., Houston, Texas, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before John H. Garver, Trial Examiner. Said hearing was held at Houston, Texas, on August 24, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of Welders, Burners, Heaters and Helpers, Local #731, A. F. of L., herein called the Welders, to intervene. All parties<sup>2</sup> appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing and in its brief the Company moved the Board to dismiss the proceeding on the grounds that the Company is not an employer, nor engaged in commerce, within the meaning of the National Labor Relations Act. The Trial Examiner reserved ruling. For reasons which appear in Section I, below, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company's request for oral argument is hereby denied. 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

Brown Shipbuilding Company, Inc., is a corporation exclusively engaged in the construction of combat vessels for the United States Navy at its yards in Harris County, near Houston, Texas. The Company's yards consist of two attached sections called "A" yard and "B" yard. "A" yard is owned by the Company; "B" yard is owned by the United States Government and leased to the Company for \$1 per year.

<sup>1</sup> At the hearing, the Firemen filed an "Amended Petition of Intervention," which the Trial Examiner granted. However, since the Firemen was not claiming any interest in the employees petitioned for by the other parties to the proceeding, the Trial Examiner stated that the petition was to be regarded as an independent petition for investigation and certification. The parties waived any objection to the timeliness of the Firemen's petition and to the conduct of the hearing relating thereto. Accordingly, we hereby accord the Firemen's petition for intervention the same status as if originally filed as a petition for investigation and certification, and it is hereby consolidated with the instant proceeding *nunc pro tunc*.

<sup>2</sup> The Company filed a limited appearance and appeared specially at the hearing solely for the purpose of contesting the Board's jurisdiction, it otherwise did not participate in the proceeding.

Operations in both yards are under the same supervision, direction, and control. The work of the yards consists of fabricating iron and steel and other products for the manufacture of seagoing vessels. All material used by the Company is purchased exclusively for the United States Government and remains the property of the United States Government during the period when work is performed thereon by the employees of the Company. A substantial amount of material for ships is acquired and shipped to the Company's yards from points outside Texas. Vessels completed by the Company are delivered to the United States Navy at the Company's yards in Texas. The Company maintains an employment office where applicants for employment are hired. The Company pays employees at the yards on its own checks and keeps Social Security records for them. All materials purchased for use at the yards and all operations at the yards are subject to the general supervision of the United States Government. The discharge of employees is vested in foremen and higher supervisors of the Company. The United States Navy can require the discharge of any employee.

We find that the Company is engaged in commerce, and is an employer, within the meaning of the Act.<sup>3</sup>

## II. THE ORGANIZATIONS INVOLVED

Sign & Pictorial Painters, L. Union #550; International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, Local 469; Local Union No. 150, Brotherhood of Firemen, Oilers, Operators and Maintenance Men; and Welders, Burners, Heaters and Helpers, Local #731, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Brotherhood of Railroad Trainmen is a labor organization admitting to membership employees of the Company.

Local No. 5, A United Brotherhood of Weldors, Cutters and Helpers of America, affiliated with Weldors and Cutters, District No. 3, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTIONS CONCERNING REPRESENTATION

Each of the petitioners in this proceeding addressed a letter to the Company, therein claiming to represent a majority of employees within its proposed unit and requesting recognition as their bargaining representative. The Company made no response to the requests from the petitioners.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Sign Painters, B. R. T., United, Boilermakers,

<sup>3</sup> See *Matter of Brown Shipbuilding Company, Inc.*, 57 N. L. R. B. 326.

and the Welders represent a substantial number of employees in the respective units herein found appropriate.<sup>4</sup>

We find that questions affecting commerce have 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 UNITS

The several petitioners in this proceeding, other than the Firemen, have organized employees in both yards of the Company in certain departments characteristic of their respective craft jurisdictions, and contend that such groups in both yards constitute separate units appropriate for collective bargaining. The Sign Painters would include in its unit all employees of the paint department who perform work of sign painting, lettering and numbering on all facilities and construction in the yards. The B. R. T. would include in its unit all employees of the railroad department engaged in the operation of steam or diesel locomotives or in the switching of cars, including locomotive engineers, firemen, engine foremen, footboard yardmasters,<sup>5</sup> yard helpers, or switchmen, but excluding hostlers. The United and the Welders agree that the alleged appropriate unit proposed by them include all employees of the welding and burning department, and all toolroom clerks regularly assigned to this department; and the Boilermakers would include in its unit all employees generally classified as boilermakers, shipfitters, riveters, chippers and caulkers, iron hangers and handlers, bolters and reamers, loftsmen, scaffold builders, flangers, slabmen, hydraulic press operators, plate planers, tank testers, punch and sheer operators, their apprentices and helpers, and tool room, attendants and material checkers servicing the foregoing categories, but excluding crane followers. The foregoing parties would exclude from their respective units clerical, plant-protection, managerial, and supervisory employees. The Company took no position with respect to the appropriateness of the unit.

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<sup>4</sup> The Field Examiner reported that the Sign Painters submitted 10 authorization cards with respect to an alleged appropriate unit estimated by it to consist of 12 employees; the B. R. T. submitted 16 cards with respect to an alleged appropriate unit estimated by it to consist of 16 employees, the United submitted 944 cards and the Welders 273 cards with respect to an alleged appropriate unit estimated by United to consist of 2500 employees; the Boilermakers submitted 954 cards with respect to an alleged appropriate unit estimated by it to consist of 1900 employees. These cards were not checked against any pay roll of the Company.

The following organizations were requested in writing to submit representation evidence, if any, but have failed to do so: Sheet Metal Workers International Association; International Association of Machinists; International Association of Bridge, Structural & Ornamental Iron Workers; United Association of Plumbers & Steam Fitters, Marine Local 682; and Regional Director, Congress of Industrial Organizations.

<sup>5</sup> The record discloses that footboard yardmasters do not come within the Board's customary definition of supervisory employees.

Employees in the several proposed units are skilled employees with their helpers and apprentices engaged in well-recognized craft work, and have often been found by us to comprise separate appropriate units. We therefore find on the basis of the entire record that the units consisting of such employees are appropriate for the purposes of collective bargaining.

*Leadermen.* The Boilermakers, the United, and the Welders would include, and the Sign Painters would exclude, leadermen. The proponents for inclusion of leadermen maintain that these employees do not exercise supervisory functions. In the prior case involving the Company,<sup>6</sup> we found that leadermen, whose responsibilities were substantially the same, were supervisory employees within our customary definition. We see no reason to depart from this decision, and shall accordingly exclude leadermen from the proposed units.

*The unit proposed by the Firemen*

The Firemen seeks to establish a unit composed generally of employees associated with the maintenance of facilities and operation, including therein operators and attendants of the pumping plant, gas plant, service garage, disposal plant, air-conditioning equipment, hot water equipment, acetylene generators, and employees performing general labor at the warehouses, shops, garages, railroad tracks, material yards, hulls and ways, but excluding air compressor operators and employees in craft units found appropriate herein and in the prior proceeding involving the Company,<sup>7</sup> and also excluding various craftsmen and semi-skilled employees not as yet organized. Since the Firemen made no substantial showing among the foregoing employees,<sup>8</sup> we find it unnecessary to make any determination as to whether such employees constitute an appropriate unit. We note, however, that the proposed unit consists of semi-skilled and unskilled employees who do not possess the functional coherence of craftsmen, nor do they constitute a true residual group, since the Firemen would exclude other employees who, so far as the record shows, are not as yet organized. It is thus apparent that such a unit lacks the community of interest which the Board customarily requires in finding a unit to be appropriate for collective bargaining purposes. In view of the unsubstantial showing made by the Firemen, and in view of the foregoing observation as to the apparent inappropriateness of the proposed unit, we shall dismiss the Firemen's petition.

<sup>6</sup> See footnote 3, *supra*.

<sup>7</sup> See footnote 3, *supra*.

<sup>8</sup> According to the testimony of the business agent of the Firemen, there are "over a hundred" employees in the alleged appropriate unit; the Firemen's petition alleges that there are approximately 300 in such unit.

We find that all employees of the paint department who perform work of sign painting, lettering, and numbering on all facilities and construction in the yards, excluding clerical employees, plant-protection employees, managerial employees, leadermen, 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.

We further find that all employees of the railroad department engaged in the operation of steam or diesel locomotives or in the switching of cars, including locomotive engineers, firemen, engine foremen, footboard yardmasters, yard helpers or switchmen, but excluding hostlers, clerical employees, plant-protection employees, managerial employees, 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.

We further find that all employees of the welding and burning department, and all toolroom clerks regularly assigned to this department, excluding clerical employees, plant-protection employees, managerial employees, leadermen, 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.

We further find that all employees generally classified as boiler-makers, shipfitters, riveters, chippers and caulkers, iron hangers and handlers, flangers, slabmen, hydraulic press operators, plate planers, tank testers, punch and sheer operators, their apprentices and helpers, and toolroom attendants and materials checkers servicing the foregoing categories, but excluding crane followers, clerical employees, plant-protection employees, managerial employees, leadermen, 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 for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We find that the questions which have arisen concerning the representation of the Company's employees can best be resolved by separate elections by secret ballot. Those eligible to vote in the several elections which we shall now direct shall be all employees of the Com-

pany in the respective units found appropriate in Section IV, above, 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.<sup>9</sup>

### 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Brown Shipbuilding Company, Inc., Houston, Texas, 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, under the direction and supervision of the Regional Director for the Sixteenth 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 groups described below, 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 clerical employees, plant-protection employees, managerial employees, leadermen, 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, and also 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 employees of the paint department who perform work of sign painting, lettering, and numbering on all facilities and construction in the yards, to determine whether or not they desire to be represented by Sign and Pictorial Painters, Local 550, A. F. of L., for the purposes of collective bargaining;

<sup>9</sup> Sign Painters requested that it be designated upon the ballot as "Sign and Pictorial Painters, Local 550, A. F. of L."; Welders requested that it be designated thereon as "Welders, Burners, Heaters, and Helpers, Local #731, affiliated with AFL"; United requested that it be designated thereon as "Local No. 5, United Brotherhood of Weldors, Cutters & Helpers of America, affiliated with Weldors and Cutters District No 3"; and Boilermakers requested that it be designated thereon as "International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, A. F. of L." The requests are hereby granted.

(2) All employees of the railroad department engaged in the operation of steam or diesel locomotives or in the switching of cars, including locomotive engineers, firemen, engine foremen, footboard yardmasters, yard helpers or switchmen, excluding hostlers, to determine whether or not they desire to be represented by Brotherhood of Railroad Trainmen, for the purposes of collective bargaining;

(3) All employees of the welding and burning department, and all toolroom clerks regularly assigned to this department, to determine whether they desire to be represented by Local No. 5, United Brotherhood of Weldors, Cutters & Helpers of America, affiliated with Weldors and Cutters District No. 3, or by Welders, Burners, Heaters, and Helpers, Local #731, affiliated with AFL, for the purposes of collective bargaining, or by neither;

(4) All employees generally classified as boilermakers, shipfitters, riveters, chippers and caulkers, iron hangers and handlers, flangers, slabmen, hydraulic press operators, plate planers, tank testers, punch and sheer operators, their apprentices and helpers, and toolroom attendants and material checkers servicing the foregoing categories, excluding crane followers, to determine whether or not they desire to be represented by International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, A. F. of L., for the purposes of collective bargaining.

### ORDER

IT IS HEREBY ORDERED that the petition of the Firemen be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision, Direction of Elections and Order.