

IN THE MATTER OF ST. JOHNS RIVER SHIPBUILDING COMPANY and
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

Case No. 10-R-1251.—Decided November 20, 1944

Messrs. Thomas P. Harper, G. A. Duncan, and C. W. Burks, of Jacksonville, Fla., for the Company.

Mr. L. E. Whitler, of Cleveland, Ohio, for the Brotherhood.

Mr. Alex F. McDonald, of Washington, D. C., and Mr. R. U. Brooks, of Jacksonville, Fla., for the Engineers.

Mr. R. R. Woodbridge, of Jacksonville, Fla., for the Council.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Brotherhood of Locomotive Firemen and Engineers, herein called the Brotherhood, alleging that a question affecting commerce had arisen concerning the representation of employees of St. Johns River Shipbuilding Company, Jacksonville, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. Said hearing was held at Jacksonville, Florida, on October 9 and 10, 1944. The Company, the Brotherhood, International Union of Operating Engineers, Local No. 673, herein called the Engineers, and Metal Trades Council of the Metal Trades Department of A. F. of L., herein called the Council, 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. 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.

59 N. L. R. B., No. 83.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

St. Johns River Shipbuilding Company, a Florida corporation, is engaged in the construction of ships for the United States Maritime Commission at its shipyard located in Jacksonville, Florida. In the period between August 15, 1942, and September 29, 1943, the Company purchased for use at its shipyard, steel, iron, lumber, other raw materials, and machinery amounting in value to more than \$10,000,000, approximately 50 percent of which was shipped to the Jacksonville yard from points outside the State of Florida. Since the first keel was laid in August 1942, the Company has built more than nine ships and delivered them to the Maritime Commission, each ship being valued at approximately \$1,500,000. Since September 1943, the business of the Company has not changed substantially.¹

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

II. THE ORGANIZATIONS INVOLVED

Brotherhood of Locomotive Firemen and Enginemen, unaffiliated, is a labor organization admitting to membership employees of the Company.

International Union of Operating Engineers, Local No. 673, affiliated with the American Federation of Labor, is a labor organization, admitting to membership employees of the Company.

Metal Trades Council of the Metal Trades Department, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Brotherhood as the exclusive bargaining representative of its locomotive engineers and oilers, contending that the locomotive engineers and oilers are presently represented under a contract between the Company, the Council, and the Engineers. The contract urged as a bar to this proceeding was executed in 1942 between the Company, the Council, and affiliated unions of the Council. Its term is the duration of the war. It has been modified several times by changes made in the Gulf

¹ At the hearing, the parties stipulated that the facts contained in the Board's decision in *Matter of St. Johns River Shipbuilding Company*, 52 N. L. R. B. 958, pertaining to commerce and jurisdictional facts, are still applicable. The number of ships completed and delivered, as given in that case is, of course, now obsolete.

Zone Agreements, to which it is made specifically subject, but has never been canceled or changed by specific agreements between the parties thereto.

In a prior proceeding, the Board had occasion to examine the contract of 1942 and found it to be no bar to a determination of representatives as to certain employees not covered by its provisions.² As we find in Section IV, *infra*, the categories of employees involved in this proceeding were not in the Company's employ when the contract was made, and are not bound to be represented as part of the contract unit unless they so desire. We find, under well-established principles, that the contract is no bar to the present proceeding.

A statement of a Board agent, introduced into evidence at the hearing, supplemented by a statement of the Trial Examiner made at the hearing, indicates that the Brotherhood and the Engineers, each represents a substantial number of employees in the unit alleged by the Brotherhood to be 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 DETERMINATION OF REPRESENTATIVES

The Brotherhood requests a unit composed of all locomotive engineers and oilers in the Railroad Service of the Rigging and Transportation Division of the Company. The Company and the Engineers contend that such a unit is inappropriate because the employees involved are an integral part of a unit of operating engineers, and have for 2 years, been represented by the Council and, specifically by the Engineers, as employees coming within the jurisdiction of that union.

In September 1942, the Company entered into a contract with the Council and signatory unions (including the Engineers) covering "all employees coming under the jurisdiction of crafts that are signatory to [the] agreement of above employer." At that time the shipyard, which was being operated by the Company, was still under construction, and employees on the railroad were on the pay roll of the construction company. The contract, however, provided for wage rates for locomotive engineers and for a classification "crane assistant (firemen, oilers, groundmen, hostlers)." In November 1942, locomotive engineers and oilers (or firemen) were transferred from the pay roll of the contractor

² *Matter of St. Johns River Shipbuilding Company*, footnote 1, *supra*.

³ The Field Examiner reported that the Brotherhood submitted 9 authorization cards, 8 of which bore signatures of persons listed on the Company's pay roll of July 6, 1944, which contained the names of 11 employees in the appropriate unit; and that the cards were dated July 1944.

The Engineers submitted 14 membership cards, 9 of which bore signatures of persons listed on the aforesaid pay roll. The cards were dated; 2 in 1941, 4 in 1942, and 3 in 1943.

to that of the Company. Since both the contractor and the Company had closed-shop contracts with the Council and the Engineers, employees transferring from the contractor were members of the Engineers. All new engineers and oilers have been hired through the Engineers and have become members of that organization prior to being employed by the Company. They have availed themselves of the grievance procedure of the Engineers.

The Brotherhood contends that railroad employees cannot be and have not been properly represented as part of a group of operating engineers. The Engineers contends that the work of crane operators, who, the Brotherhood concedes, are operating engineers, and that of locomotive engineers is so similar that an appropriate unit must include both. Although the functions of the cranes and those of the locomotives in the Company's yard overlap somewhat,⁴ and the skills required to operate the two types of equipment are similar, there is little or no interchange between locomotive engineers and crane operators. Locomotive engineers and oilers are an identifiable group. They work under separate supervision. They have separate seniority from other employees represented by the Engineers. They must exercise the skill of railroadmen to a much greater degree than must crane operators.

Under these circumstances, it is evident that locomotive engineers and oilers can function for purposes of collective bargaining either in a separate unit or as a part of the unit represented by the Engineers. The Company and the Engineers contend that these employees are foreclosed from presently making a choice, such as is usually given by the Board to employees in situations of this type, by the fact that they were included in the contract between the Company and the Engineers and have been bargained for by the Engineers since September 1942. We find these contentions to be without merit. At the time that the contract of September 1942 was executed, no locomotive engineers or oilers were employed by the Company. They came into the Company's employ under a closed-shop contract. They have never been accorded an opportunity to indicate the type of representation which they want. Railroadmen differ materially in skill, functions, and interests from the bulk of operating engineers and from ordinary maintenance and production employees engaged in shipbuilding. They cannot, therefore, be treated as a simple accretion to whatever unit the contract may be said to have created.⁵ Accord-

⁴ Some cranes operate on the same tracks as the locomotives. When only one or two cars are to be shifted and a locomotive is not free to shift them, the cranes shift their own cars.

⁵ The contract is made between the Company and the Council and its affiliated unions, the "Council and its comprising Unions signatory to [the] agreement being accepted as the collective bargaining agency for all employees coming under the jurisdiction of crafts that are signatory to this agreement of above employer. [The] agreement covers the entire operations of the [Company] except building trades construction." It is, therefore,

ingly, we shall direct that an election be held among the locomotive engineers and oilers in the Company's employ and our finding of appropriate unit shall depend, in part, upon the desires of those employèes as expressed in that election. If they choose the Brotherhood, they will have expressed a desire to be represented in a separate unit; if they choose the Engineers, they will have expressed satisfaction with the form of unit presently in being.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among locomotive engineers and oilers 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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with St. Johns River Shipbuilding Company, Jacksonville, Florida, 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 Tenth 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 locomotive operators and oilmen 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 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 they desire to be represented by Brotherhood of Locomotive Firemen and Enginemen, unaffiliated, or by International Union of Operating Engineers, Local No. 673, for the purposes of collective bargaining, or by neither.

uncertain (and unnecessary to determine in this proceeding) whether the unit established is a single plant-wide unit or sundry smaller units.