

In the Matter of AMERICAN TOBACCO COMPANY, INC. and INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 320, AMERICAN FEDERATION OF LABOR

*Case No. 9-R-1576.—Decided December 13, 1944*

*Mr. J. G. Hager, of Louisville, Ky., for the Company.*

*Mr. William E. Fredenberger, of Louisville, Ky., for the Union.*

*Miss Ruth E. Bliefeld, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Brotherhood of Firemen and Oilers, Local 320, American Federation of Labor, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of American Tobacco Company, Inc., Louisville, Kentucky, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before R. N. Denham, Trial Examiner. Said hearing was held at Louisville, Kentucky, on November 1, 1944. The Company and the Union 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 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

American Tobacco Company, Inc., is a New Jersey corporation, operating plants in various States of the United States. It manufactures smoking and chewing tobacco and cigars in these plants. The only plant involved in this proceeding is located at Louisville,

59 N. L. R. B., No. 178.

Kentucky. Ninety percent of the finished products of this plant is shipped to points outside the State of Kentucky, amounting to substantially over \$100,000 per year. The raw materials used consist primarily of leaf tobacco, of which less than 25 percent is shipped to the Louisville plant from points outside the State of Kentucky.

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

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Firemen and Oilers, Local 320, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

At conferences held between the Company and the Union in August and September 1944, the Union requested recognition as the exclusive bargaining representative of certain of the boiler room and powerhouse employees of the Company. The Company refused to grant recognition until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</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

In its petition, as amended at the hearing,<sup>2</sup> the Union contends for a unit consisting of the boiler room and powerhouse employees, excluding therefrom all supervisory employees.<sup>3</sup> These include the firemen, coal passers, engineer helpers, engineers, and relief engineers. The chief engineer, who is in charge of all employees in the boiler room

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<sup>1</sup> The Field Examiner reported that the Union submitted 12 authorization cards, all of which bore the names of persons appearing on the Company's pay roll which contained the names of 18 employees in the appropriate unit; and that 6 cards were dated July 1944, 5 were dated August 1944, and 1 card undated.

<sup>2</sup> In its petition the Union requested a unit composed of the boiler room and powerhouse employees and the oilers. At the hearing the Union requested permission to amend its petition to exclude the oilers from the unit. This request was acquiesced in by the Company. The Trial Examiner granted the request and his ruling is hereby upheld. It does not appear from the record that there are any employees listed by the Company as oilers.

<sup>3</sup> The production and maintenance employees of the Company are represented by the Tobacco Workers International Union, A. F. of L. under a contract dated August 7, 1944. This union makes no claim to represent the employees in the unit claimed by the Union and has filed its formal waiver to that effect.

and powerhouse, is excluded, as a supervisory employee. The Company does not object to the unit requested by the Union, but would exclude therefrom the two engineers, who are on duty during the two night shifts when the plant is not in operation, and the two relief engineers.

The two engineers are employed on the afternoon and night shifts respectively. Their duties consist of maintaining air conditioning and humidity standards, in accordance with the instructions of the chief engineer, and checking the appropriate regulators stationed throughout the plant which govern the maintenance of these standards. The engineers also make a regular tour of the plant, checking on equipment and making any necessary regulatory changes, and ring in at stated intervals. They also make repairs if the necessary equipment is available, and, if not, the repair work is left for the day shift employees. The engineers are required to check on the firemen, and if necessary, to assist both the firemen and watchmen in an emergency. They receive their instructions from the Chief Engineer, and report to him any infractions of duty on the part of the firemen or watchmen, or any emergencies. These men are paid a salary, while the other employees in the unit requested are paid on an hourly basis. It does not appear, however, that the engineers are supervisory employees within our usual definition. Although their work requires specialized knowledge of the machines with which they deal, it is evident that this knowledge is not of a technical or professional character. We shall, therefore, include the engineers in the appropriate unit.

The two relief engineers divide their time between maintenance and boiler room work. They are also paid on a salary basis. Their duties as engineers are the same as those of the engineers discussed *supra*. It appears that their interests lie mainly with those of the other engineers rather than with the maintenance employees, inasmuch as a promotion for them would be to the job of engineer. We shall therefore include the relief engineers in the appropriate unit.

We find that all boiler room and powerhouse employees, including the engineers and relief engineers, but excluding all 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

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with American Tobacco Company, Inc., Louisville, Kentucky, 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 or not they desire to be represented by International Brotherhood of Firemen and Oilers, Local 320, affiliated with the American Federation of Labor, for the purposes of collective bargaining.