

In the Matter of CHEMURGIC CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 824, A. F. OF L.

*Case No. 20-R-1128.—Decided February 5, 1945*

*Mr. Herbert L. Breed*, of Oakland, Calif., for the Company.

*Mr. James F. Galliano*, of Oakland, Calif., and *Mr. K. C. Apperson*, of Richmond, Calif., for the IAM.

*Mr. P. H. McCarthy, Jr.*, of San Francisco, Calif., and *Mr. R. D. Lee*, of Richmond, Calif., for the Laborers.

*Mr. Paul Bisgyer*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, Lodge 824, A. F. of L., herein called the IAM, alleging that a question affecting commerce had arisen concerning the representation of employees of Chemurgic Corporation, Richmond, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert E. Tillman, Trial Examiner. Said hearing was held at San Francisco, California, on December 11, 12, and 13, 1944. The Company, the IAM, and Construction, General and Track Laborers, Production, Factory, Plant, Maintenance, Oil, Tunnel and Aqueduct Workers, Local Union 324 of Contra Costa County, A. F. of L., herein called the Laborers, 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Chemurgic Corporation is a Nevada corporation having its office and principal place of business in Richmond, California. The Com-  
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pany is engaged in the manufacture of bombs and other pyrotechnics at its two plants, one in Richmond, California, with which we are solely concerned, and the other in Turlock, California. During the first 10 months in 1944, the Company purchased for use at its two plants, raw materials valued at approximately \$500,000, of which about 50 percent was shipped from points outside the State of California. During the same period, products finished at these plants were valued at approximately \$1,500,000, about 90 percent of which was delivered to the United States Government at these plants, the remainder having been sold to private firms, some of which are located outside the State.

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

## II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Lodge 824, and Construction, General and Track Laborers, Production, Factory, Plant, Maintenance, Oil, Tunnel and Aqueduct Workers, Local Union 324 of Contra Costa County, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On June 23 and July 7, 1944, the IAM requested the Company to bargain with it as the representative of certain of the Company's employees. The Company refused, claiming that it was bound by an existing contract with the Laborers. While the Company does not now raise the contract as a bar, the Laborers argues that it precludes a present determination of representatives.

On November 26, 1941, the Company and the Laborers entered into a closed-shop contract covering all employees, effective January 2, 1942, for a term expiring on July 1, 1945. In accordance with its provisions, the contract was modified in unimportant respects by a supplemental agreement dated August 17, 1942, which left the termination date unchanged. Inasmuch as this contract is for a longer period than 1 year and has already been in effect more than 3 years, it does not constitute a bar.<sup>1</sup>

The Laborers also urges, in substance, dismissal of the petition on the ground that both it and the IAM are American Federation of Labor affiliates involved in a jurisdictional dispute. However, since

<sup>1</sup> *Matter of Mathieson Alkali Works*, 55 N. L. R. B. 1100; and *Matter of Sutherland Paper Company*, 55 N. L. R. B. 38

Moreover, the record discloses that the Company and the Laborers have negotiated a new contract which only awaits disposition of the instant proceeding before becoming effective.

it appears that the jurisdictional dispute has been in existence for more than 2½ years and there is no likely prospect of settlement by the parent organization,<sup>2</sup> we are of the opinion that a present determination of representatives is not foreclosed.<sup>3</sup>

The record indicates that the IAM represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</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; THE DETERMINATION OF REPRESENTATIVES

The IAM requests a unit of machinists and machinist helpers. The Laborers and the Company contend that such a unit is inappropriate for the reasons that there are no employees solely engaged in work associated with the machinist craft, and collective bargaining has been conducted for 3 years on the basis of a plant-wide unit.

There are, at present, six employees whom the IAM would include in the unit. Three of them, Lloyd Westcamp, Thomas Peterson, and Elmer McCrea, are classified by the IAM as machinists, and three, Joseph Shields, Albert Evans, and Ocy Pearce, as machinist helpers. The Company and the Laborers apparently consider these employees merely general maintenance men. Westcamp testified that he devotes 90 percent of his time to machinist lathe work, and the balance of his time to the upkeep of motors and plant maintenance and that Peterson performs similar work. McCrea testified that his duties entail repairing, installing and setting up machinery, building new equipment, and lathe work.<sup>5</sup> Significantly, in an application submitted to the War Labor Board requesting a machinist wage rate for Westcamp, Peterson, and McCrea, the functions of these employees were described by the Company as those of machinists.

Turning to Shields, Evans, and Pearce, it appears that they are unskilled workers performing diverse jobs. Shields spends about 75 percent of his time collecting and disposing of waste chemical products, and the rest of his time in gardening and other odd tasks.

<sup>2</sup> A copy of an unanswered letter dated October 4, 1944, from the Board's Director of Field Division to Frank P. Fenton, Director of Organization of the American Federation of Labor, requesting information as to efforts made to settle the jurisdictional dispute between the unions involved herein, was received in evidence.

<sup>3</sup> *Matter of Southwestern Public Service Company, Panhandle Division*, 58 N. L. R. B. 926; *Matter of Midwest Printing Co.*, 58 N. L. R. B. 673; *Matter of Mountain States Power Company*, 58 N. L. R. B. 109.

<sup>4</sup> The IAM introduced into evidence an authorization list containing the names of six persons appearing on the Company's pay roll. There are six employees in the alleged appropriate unit.

The Laborers relies on its contract as proof of interest in the proceeding.

<sup>5</sup> It appears that machinists also may occasionally do work not directly related to their craft.

Evans cares for the company-owned sheep, assists in gardening, helps the electrician "a large percentage of the time" and does other general jobs. Pearce performs substantially the same duties as Shields and Evans, and all three occasionally help machinists in such work as moving heavy machinery.

In view of the foregoing facts, we are of the opinion and find that Westcamp, Peterson, and McCrea comprise a well-defined, machinist craft group, and that Shields, Evans, and Pearce are not machinist helpers.

As noted in Section III, *supra*, for 3 years the Laborers has maintained contractual relations with the Company for all employees pursuant to the closed-shop agreement dated November 26, 1941, as modified by the 1942 agreement. It appears, however, that at the time of the execution of the original contract, the Company employed about two non-supervisory maintenance employees, neither of whom probably was a machinist. The record indicates that the machinists, Westcamp, Peterson, and McCrea, never became members of the Laborers, despite the provision in the contracts requiring new employees to join within 3 weeks after they are hired.<sup>6</sup> On the contrary, it is clear that, during their employment, they have continuously retained their membership in the IAM.<sup>7</sup> In 1942, the IAM sought recognition from the Company as the bargaining agent for machinists, but the Company refused because of its contract with the Laborers, while the Laborers apparently declined, and still declines, to relinquish jurisdiction over such employees to the IAM.

The evidence is not contradicted that machinists have ignored the grievance procedure<sup>8</sup> adopted by the Laborers and the Company, and both individually and as a group, and without the Laborer's aid, have presented their complaints and requests for wage increases directly to the Company's personnel office, its president, or other officer, who may

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<sup>6</sup> Westcamp testified that 3 or 4 months after he began to work for the Company he received a post card from the Laborers requiring him to join or be relieved of his job; that he complained to the IAM's financial secretary; and that together they discussed the matter with the Laborers' senior business representative who tore up the card saying that it was a mistake.

<sup>7</sup> Westcamp was employed in July 1942 and was initiated into the IAM on September 16, 1942. McCrea was employed on April 20, 1943 and was transferred to the IAM on April 9, 1943 from another lodge, while Peterson also was transferred to the IAM in July 1942.

<sup>8</sup> While the contract and its supplement do not specifically provide for the handling of grievances, a grievance procedure has been evolved through a course of practice. About a year ago, at the suggestion of the War Labor Board, a Labor Management Committee was formed to consider job reclassifications necessitated by the frequent changes in the Company's operations. Gradually, this Committee assumed the additional function of adjusting employees' grievances, and a procedure was adopted, which is presently in effect, whereby employees, in the first instance, bring their complaints to the plant steward or a committee member, who in turn submits them to the Committee. If no settlement results, the grievances are jointly considered by the Laborers' senior business representative and the Company's president. This Committee consists of three employees and three Company representatives. The employee representatives are chosen by and from 10 of the oldest employees who are members of the Laborers.

have referred such complaints and requests to the Labor Management Committee for initial consideration. In pursuing this independent course of bargaining, machinists, it appears, have been successful in a number of instances, although they may also have shared in a general wage increase and other benefits obtained by the Laborers for all the Company's employees.

In view of all the circumstances, we are of the opinion that the machinists, may constitute a separate bargaining unit,<sup>9</sup> or be included in the existing comprehensive unit. Therefore, before making a final determination with respect to the appropriate unit, we shall first ascertain the desires of the employees themselves as reflected by an election. Upon the results of this election, will depend, in part, our determination. Accordingly, we shall direct that an election by secret ballot be conducted among all the Company's machinists at its Richmond, California, plant, 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, who were employed during the pay-roll period immediately preceding the date of the Direction of Election, subject to the limitations and additions set forth therein, to determine whether they desire to be represented by the IAM or the Laborers. If a majority of the employees in this voting group select the IAM as their bargaining representative, they will have thereby indicated their desire to constitute a separate appropriate unit. If, however, a majority of these employees choose the Laborers, then they will have thereby indicated their desire to be part of the established plant-wide unit.<sup>10</sup>

### 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 Chemurgic Cor-

<sup>9</sup> See *Matter of General Electric Company (Lynn River Works and Everett Plant)*, 58 N. L. R. B. 57, and cases cited; and *Matter of Goodyear Tire & Rubber Company*, 55 N. L. R. B. 918, and cases cited.

<sup>10</sup> The IAM, in the alternative, would accede to a unit of maintenance department employees excluding the toolroom attendant and the maintenance department foreman. While we have permitted, under appropriate circumstances, a unit restricted in scope to be established, notwithstanding a history of collective bargaining on a more comprehensive basis, we have done so in cases involving well-defined skilled, and cohesive craft groups. See cases cited in footnote 9. Accordingly, we find no merit in the IAM's alternative position. Moreover, considering the history of collective bargaining, those factors which impel a self-determination election for machinists are not present insofar as the maintenance department employees are concerned.

poration, Richmond, 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 voting group set forth 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 Machinists Lodge 824, A. F. L.,<sup>11</sup> or by Construction, General and Track Laborers, Production, Factory, Plant, Maintenance, Oil, Tunnel and Aqueduct Workers, Local Union 324 of Contra Costa County, A. F. of L., for the purposes of collective bargaining, or by neither.

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

<sup>11</sup> The IAM's request that its name appear on the ballot as set forth above is granted.