

In the Matter of BETHLEHEM STEEL COMPANY, SHIPBUILDING DIVISION
and TECHNICAL ENGINEERS, ARCHITECTS AND DRAFTSMEN'S UNION,
LOCAL 89, AFL, AND BAY CITIES METAL TRADES COUNCIL

Case No. 20-R-1256.—Decided March 16, 1945

Brobeck, Phleger, & Harrison, by Mr. Richard Ernest, of San Francisco, Calif., for the Company.

Messrs. J. A. Johnson and Justin Vanderlaan, of Oakland, Calif., for Local 89.

Mr. Donald H. Frank, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a joint petition duly filed by Technical Engineers, Architects and Draftsmen's Union, Local 89, AFL, herein called Local 89, and Bay Cities Metal Trades Council, herein called the Council, alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company, Shipbuilding Division, 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 January 25, 1945. The Company and Local 89 appeared and participated.¹ 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.

¹ Although the Council petitioned jointly with Local 89, the former did not appear or participate at the hearing

Shipwrights, Joiners, Boat Builders, Millmen and Loftsmen, Local #1149, affiliated with the Council and with the United Brotherhood of Carpenters and Joiners of America, was served with Notice of Hearing, but did not appear or participate

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem Steel Company is a Pennsylvania corporation the stock of which is owned by Bethlehem Steel Corporation, a Delaware corporation. Among its activities, the Company is engaged in the operation of a shipyard at 20th and Illinois Streets, San Francisco, California. This San Francisco shipyard is the only operation of the Company involved in the instant proceeding. There the Company repairs and builds ships, including naval and cargo vessels employed in interstate and foreign commerce. For the operation of the yard, the Company purchases annually supplies and materials valued in excess of \$1,000,000, more than 50 percent of which comes to the shipyard through channels of interstate commerce. Annually the value of the repairs and construction of ships at this yard exceeds \$2,000,000.

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

II. THE ORGANIZATIONS INVOLVED

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

Bay Cities Metal Trades Council is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to Local 89 as the exclusive bargaining representative of certain of its employees until Local 89 has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that Local 89 represents a substantial number of employees in the unit hereinafter found 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.

² The Field Examiner reported that Local 89 submitted 15 designation cards all of which bore apparently genuine original signatures that the names of all persons appearing on the cards were listed on the Company's pay roll of November 15, 1944, which contained the names of 15 employees in the appropriate unit; and that the cards were dated October and November 1944. The cards jointly designated the Council and Local 89.

IV. THE APPROPRIATE UNIT

Local 89 and the Council seek a unit consisting of all employees of the Company in the Shipwright Department of the San Francisco yard employed as junior chainmen, senior chainmen, junior transitmen, senior transitmen, chiefs of party, and the sub-supervisors thereof. The employees thus described are engaged in ship surveying duties, involving the use of the transit, rod and chain, gunners' quadrant, and various other surveying instruments.

Prior to 1938, the Company had no centralized group of employees engaged in surveying work. Each department in the yard had some employees who were capable of performing the necessary surveying and who performed that work as an incident to the regular duties typical of their positions as shipwright, machinists, etc., in the department to which they belonged. In that year, upon a determination by the Company that the increased amount of work necessitated the employment of full-time surveying employees, and a realization by the Company of the potentialities of the extensive use of the transit, the Company began employing full-time surveying employees whom it placed in the Shipwright Department.³

Pursuant to a consent cross-check⁴ of all production and maintenance employees, excluding among others "technical engineers," the Company and the Council⁵ signed on June 25, 1941, a collective bargaining contract which is still in effect.⁶

The Company contends that the yard's bargaining history makes the unit sought inappropriate, and claims that this is shown by the inclusion of the employees involved herein in the production and maintenance unit covered by the above contract. Testimony of an official of the Company at the hearing revealed that the Company interprets the exclusion of "technical engineers" as excluding the naval architect, the chief engineer, and the chief draftsmen, but not the employees involved herein. We find no basis for this interpretation. The naval architect, chief engineer, and chief draftsmen are clearly supervisory employees who would have been excluded as such from the production and maintenance unit, even if the words "technical engineers" had been omitted. We note that Appendix "A" of the contract, which provides the wage scales for classifications of employees, does not list any of

³ The yard is divided into three divisions, Hull, Engineering, and Outfitting. The Hull Division is divided into four departments of which one is the Shipwright Department.

⁴ Case No. 20-R-505.

⁵ The Council signed as representative of all the local unions affiliated with it (including Local 89), which represented employees covered by the contract.

⁶ The contract would not under any circumstances act as a bar to a present determination of representation, since it provides that it shall continue in operation for the duration of the National Emergency or for a period of 2 years, whichever is longer, and has already been in operation for over 3½ years.

the classifications involved herein. The contract provides as well that its closed-shop provisions apply only to those employee classifications listed in Appendix "A". That the contract was not intended to apply to these employees is substantiated by the fact that the Council, a signatory to the contract, is a joint petitioner herein, and that none of the affiliates of the Council appeared at the hearing to contest the proceeding.⁷ We are of the opinion that nothing in the bargaining history of the Company demonstrates that the unit sought is not appropriate.

The Company further contends, however, that the unit sought is based upon the use of certain surveying instruments and that the unit is therefore inappropriate because the use of those instruments is not confined to these employees. The record contains conflicting testimony as to what types of surveying work were performed by the regular production and maintenance employees prior to the establishment of the centralized group, and how much surveying work has been performed by those regular production and maintenance employees since that time. It is clear, however, that if the transit was used at all prior to 1938, its use was extremely limited. Moreover, while it was established that those regular production and maintenance employees have continued to perform some surveying work at all times since 1938, their surveying has been of a less precise nature, and any surveying they have performed has always been carried on from a base line or series of points established by the centralized group. Recently, with the decrease in the number of employees in the centralized group from 15 to 11, the amount of surveying performed by the regular employees has, of necessity, increased. We note, however, that there are, today, no regular production and maintenance employees who use the transit in their present operations. The record reveals that some of the employees in the centralized groups are college engineering graduates, while most have had at least some college engineering courses; that the employees in the unit sought are an easily identifiable group, since all of them are in one department, engaged in one type of work, using the same instruments, and having their own office and supervisor. We are of the opinion that the employees in this centralized surveying group constitute a separate appropriate unit for the purposes of collective bargaining.

Local 89 and the Council would include in that unit the chiefs of party and the sub-supervisors thereof. The Company agrees that these titles serve more as a means of providing additional wage classifications than they do as a method of signifying supervisory functions.

⁷ A representative of Shipfitters and Helpers, Lodge #9, affiliated with the Council and with the International Brotherhood of Boilermakers, Shipfitters and Helpers of America, appeared and stated for the record that his organization had no interest in the unit sought herein.

Employees in the two classifications hold substantially the same position. Both are engaged in the use of the transit as extensively as are senior transitmen, and they enjoy the same hours and working conditions. At times, they direct parties of one to three men, much as a mechanic would direct his helpers. They have no power to hire, discharge, or promote. They have not been instructed to recommend such action, although they may request that a man be transferred from one individual party to another. The Shipwright foreman does not rely upon their recommendations. Their powers may be contrasted with those of their supervisor, who is directly responsible to the Shipwright foreman, and has effective power to recommend hire, discharge, and promotion. The title "chief of party" designates a supervisor with substantial authority when applied to land surveying, but as applied here, to work on ship construction, it is a misleading term since the parties are considerably smaller and the authority is centralized in the supervisor of the group. We are of the opinion that sub-supervisors and chiefs of party are not supervisory employees within our usual definition and are properly included in the unit hereinafter found appropriate.

We find that all employees of the Company in the Shipwright Department of the San Francisco yard employed as junior chainmen, senior chainmen, junior transitmen, senior transitmen, chiefs of party, and the sub-supervisors thereof, but excluding the supervisor thereof 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

The Union requested that eligibility to vote in the election hereinafter directed be determined by the pay roll of the week ending prior to the hearing. We find no persuasive reason, however, for departure from our usual eligibility date. 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 Rela-

tions 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 Bethlehem Steel Company, Shipbuilding Division, San Francisco, California, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 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 or not they desire to be represented by Technical Engineers, Architects and Draftsmen's Union, Local 89, AFL, and Bay Cities Metal Trades Council, for the purposes of collective bargaining.