

IN the Matter of BEALL PIPE AND TANK CORPORATION *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, LOCAL 599, A. F. OF L.

Case No. 19-R-1469.—Decided March 19, 1945

Mr. William G. Stratton, of Billings, Mont., for the Company.

Mr. I. J. Ironside, of Kansas City, Kans., and *Mr. S. P. Siciliano*, of Billings, Mont., for the Boilermakers.

Mr. Sylvester Graham, of Helena, Mont., and *Mr. Chell Peterson*, of Billings, Mont., for the U. S. A.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local 599, A. F. of L., herein called the Boilermakers, alleging that a question affecting commerce had arisen concerning the representation of employees of Beall Pipe and Tank Corporation, Billings, Montana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Billings, Montana, on February 20, 1945. At the commencement of the hearing, the Trial Examiner granted a motion of United Steelworkers of America, Local Union 3169, C. I. O., herein called the U. S. A., to intervene. The Company, the Boilermakers, and the U. S. A. appeared at and participated in the hearing and 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:

60 N. L. R. B., No. 229.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Beall Pipe and Tank Corporation is an Oregon corporation with its principal office at Portland, Oregon. We are here concerned with its plant at Billings, Montana, where it is engaged in the repair of petroleum transports and over-the-road automotive equipment. The Company purchases raw materials for use at its Billings plant valued at about \$5,000 monthly, substantially all of which is shipped to it from points outside the State of Montana. During the same period the Company ships products from its Billings plant valued at about \$10,000, approximately 50 percent of which is shipped to points outside the State of Montana.

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

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local 599, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

United Steelworkers of America, Local Union 3169, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 1, 1944, the Boilermakers requested recognition of the Company as exclusive collective bargaining representative of the employees at the Billings plant. The Company refused this request on the ground that it was operating under a contract with the U. S. A.

On April 28, 1944, the Company and the U. S. A. entered into an exclusive collective bargaining contract which provides that the contract remain in effect until April 28, 1945, and from year to year thereafter unless notice of a desire to terminate is given by either party thereto not less than 30 days prior to any annual expiration date. As stated hereinabove, the Boilermakers made its claim to the Company on December 1, 1944. Inasmuch as the Boilermakers made its claim prior to March 28, 1945, the date upon which the contract might automatically renew itself, we find that the contract does not preclude the Board from investigating or certifying a bargaining representative for the purpose of negotiating a new agreement for the period following April 28, 1945.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Boilermakers represents

a substantial number of employees in the unit hereinafter found to be appropriate.¹

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 Boilermakers urges that all production and maintenance employees at the Billings plant of the Company, including assistant foremen, but excluding the night foreman and clerical and supervisory employees, constitute an appropriate bargaining unit. The only controversy with respect to the unit concerns assistant foremen. The Company and the U. S. A. would exclude them from the unit.

The Company employs two employees classified as assistant foremen. The parties agree that the general foreman, who has complete charge of all operations, should be excluded from the unit. The assistant foremen instruct and direct helpers and are under a duty to see that the work is satisfactorily performed. It appears that the assistant foremen spend most of their time performing physical labor. The assistant foremen have the authority to recommend the discharge of other employees, although before the latter may be discharged an independent investigation is conducted by the general foreman. We conclude that the assistant foremen are supervisory employees, and as such, we shall exclude them from the unit.

We find that all production and maintenance employees at the Billings plant of the Company, excluding clerical employees, the general foreman, night foreman, assistant foremen, and any 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

We shall direct that the question concerning representation which has arisen be resolved by means of 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.

¹The Field Examiner reported that the Boilermakers presented 11 membership application cards bearing the names of persons who appear on the Company's pay roll of December 12, 1944. There are approximately 15 employees in the appropriate unit. The U. S. A. did not present any evidence of representation, but relies upon its contract as evidence of its interest in the instant proceeding.

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 Beall Pipe and Tank Corporation, Billings, Montana, an election by secret ballot shall be conducted at such time as the Board shall in the future direct, upon advice from the Regional Director that an election may appropriately be held, under the direction and supervision of the Regional Director for the Nineteenth 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 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 International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local 599, A. F. of L., or by United Steelworkers of America, Local Union 3169, C. I. O., for the purposes of collective bargaining, or by neither.