

In the Matter of A. O. SMITH CORPORATION—PACIFIC COAST WELDING  
DIVISION, EMPLOYER *and* INTERNATIONAL BROTHERHOOD OF BOILER-  
MAKERS, IRON SHIPBUILDERS & HELPERS OF AMERICA, LOCAL 92,  
A. F. OF L., PETITIONER

*Case No. 21-RC-433.—Decided November 30, 1948*

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The labor organizations named below claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The Petitioner seeks a unit of all production, maintenance, and repair employees of the Employer, excluding inspectors working out of the engineering office or laboratories, office, clerical and professional employees, guards and supervisors. The Employer agrees with the Petitioner's contention as to the unit. The Intervenor, United Electrical, Radio and Machine Workers of America, CIO, urges that the proposed unit is inappropriate because it fails to include the employees

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<sup>1</sup> United Electrical, Radio and Machine Workers of America, CIO, has not complied with Section 9 (f), (g), and (h) of the Act, but was permitted to intervene because of its present contract covering the employees involved herein. The Intervenor does not contend that this contract is a bar to the present proceeding.

\*Chairman Herzog and Members Houston and Gray.

of the A. O. Smith Electrical Manufacturing Company, hereinafter called the Electrical Company.

The Employer, a division of the A. O. Smith Corporation of Milwaukee, is located adjacent to other wholly owned subsidiaries of its parent company,<sup>2</sup> in Los Angeles, California. There is no centralized control of these plants. Each, including the Employer, has its own Board of Directors, which determines the policies for its respective corporation.<sup>3</sup> The action taken by a subsidiary's Board of Directors as to labor relations and other matters does not have to be approved by the Board of Directors of the parent corporation. The Manager of Industrial Relations of the parent corporation may make recommendations, but his recommendations are not binding on the subsidiary corporations.

The Employer was formerly part of the Electrical Company. On May 1, 1948, the assets and property of the Electrical Company's Welding Division were transferred from that Company to the A. O. Smith Corporation of Milwaukee, and this Division was put under separate management. Since that time there have been no transfers of employees between the Electrical Company and the Employer. Electrical Company employees, however, have performed work for the Employer on a contract basis, and this work is billed as if an outside contractor had done the work. Separate bank accounts were established for the Employer on May 1, 1948; separate accounting books and records are kept; different accountants handle the business; and there is separate management personnel for the employees of each company.

The personnel of the Employer is composed of persons who had been employees of the Electrical Company's Welding Division, who were transferred to the Employer's pay roll on May 1, and new employees hired by the Employer since May 1. The work, working conditions, and supervision of these employees after May 1 remained the same as it had previously been.

On August 20, 1947, the Electrical Company and the Intervenor executed a contract which covered all employees of that company, including the employees of its Welding Division. At the time of the reorganization on May 1, 1948, the Intervenor was notified of the transfer in ownership of the Welding Division, and an oral agreement extended the benefits of the contract with the Electrical Company to the transferred employees of the Employer. This contract expired on August 20, 1948. When a new contract covering employees of the

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<sup>2</sup> The subsidiaries are the Smith Meter Corporation, the A. O. Smith Electrical Manufacturing Company, both California corporations, and the A. O. Smith Corporation.

<sup>3</sup> Some members of the Boards of Directors of the individual corporations are also members of the Board of Directors of the parent corporation.

Electrical Company was negotiated, the employees of the Employer were specifically excluded from that contract, and separate negotiations were held simultaneously for the Electrical Company's employees and for the Employer's employees.

Under all the circumstances and particularly in view of the fact that the Electrical Company and the Employer are separate functional and corporate entities, and also of the fact that the Intervenor itself excluded the Employer's employees from its contract negotiations with the Electrical Company, we are persuaded that the prior bargaining history is no longer controlling and that a unit confined to the employees of the Employer is appropriate.<sup>4</sup>

Upon the entire record, we find that all production, maintenance, and repair employees of the A. O. Smith Corporation—Pacific Coast Welding Division, Los Angeles, California, excluding inspectors working out of the engineering office or laboratories, office, clerical and professional employees, guards and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### DIRECTION OF ELECTION<sup>5</sup>

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, Local 92, A. F. of L.

<sup>4</sup> *Matter of The James Hanley Company*, 79 N. L. R. B. 929. Cf. *Matter of Bonita Ribbon Mills and Brewton Weaving Company*, 79 N. L. R. B. 1462; *Matter of Roanoke Mills Company*, 76 N. L. R. B. 195.

<sup>5</sup> We shall not place the Intervenor on the ballot inasmuch as it has not complied with Section 9 (f), (g), and (h) of the Act.