

In the Matter of JACOBSEN MFG. Co., EMPLOYER *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION No. 309 & 309A, AFL, PETITIONER

*Case No. 31-RC-25.—Decided April 20, 1949*

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this matter was held before Edward T. Maslanka, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the conclusion of the hearing, the Intervenor moved to dismiss the petition, on the ground that the unit sought was inappropriate. For reasons stated below, we hereby deny the Intervenor's motion.

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 employees of the Employer.
3. A question affecting commerce exists<sup>1</sup> concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

<sup>1</sup>The Employer and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Sub Regional Office, Local 556, CIO, herein called the Intervenor, have bargained with respect to all the Employer's employees, including those now sought to be represented by the Petitioner, since 1938. The last complete written contract between the Employer and the Intervenor was executed April 3, 1942. This contract provided that it was to remain in effect for 1 year, and thereafter until terminated by either party, upon 30 days' written notice. Neither party to the contract had ever filed such termination notice up to the time of the hearing. The record indicates that on March 4, 1948, the parties orally agreed that the 1942 contract was to run from year to year, unless terminated by either party 30 days before the anniversary date. The petition herein was filed on March 19, 1948.

The Intervenor maintains that the petition was not timely, and that the 1942 contract constituted a bar to this proceeding. We find no merit in this contention. The 1942 contract, after its initial term of 1 year, became a contract terminable at will. Since it has been in effect for more than 2 years, it is not a bar to a present determination of representatives. *Matter of Wisconsin Telephone Company*, 75 N. L. R. B. 993. Moreover, the alleged oral agreement of March 4, 1948, cannot constitute a bar to this proceeding, under well-established Board rules, as it was not reduced to writing. *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

82 N. L. R. B., No. 158.

4. The Petitioner seeks a unit of all stationary engineers and firemen, excluding office workers, executives, and production employees. The Employer and the Intervenor contend that the unit sought is inappropriate and that the employees sought to be represented by the Petitioner should not be severed from the existing production and maintenance unit, particularly in view of a 10-year history of bargaining on a broader basis.<sup>2</sup>

The Employer is engaged in the manufacture of power lawn mowers, water systems, and other products. Its entire plant is housed in a single building. The unit sought by the Petitioner is, in effect, a unit of boiler room employees, of whom there are four on the Employer's pay roll. The Employer classifies one as an "engineer" and the other three as "firemen and watchmen." All four are licensed by the city of Racine, Wisconsin.<sup>3</sup> The boiler room is separated from the remainder of the plant by a brick wall and a large door, which is always open.

The engineer<sup>4</sup> is in charge of all operations in the boiler room and is also responsible for the maintenance and installation of boiler equipment, steam pipes, heating systems, water pipes, sanitary facilities, air compressors, and air lines. He services all boiler room equipment, any production machines which are equipped with air, water, or steam, and the fire protection sprinkler system.<sup>5</sup>

The three firemen and watchmen work under the direction of the engineer and assist him in carrying out his duties. They tend the boilers, watch various valves and gauges to see that the boilers are functioning properly, and make minor repairs to boiler room equipment.<sup>6</sup>

Occasionally, maintenance<sup>7</sup> or production employees may be brought into the boiler room to help repair broken pipes or valves,

<sup>2</sup> The Employer and the Intervenor have bargained with respect to all the Employer's employees, including the boiler room employees, since 1938.

<sup>3</sup> The Employer's works manager testified that the three firemen and watchmen are licensed as second class firemen. A representative of the Petitioner testified that all four boiler room employees are licensed as engineers.

<sup>4</sup> Also referred to in the record as the "chief engineer." His superior is the master mechanic.

<sup>5</sup> The Employer supplies steam from its boiler room to a nearby school. The Employer's engineer visits this school about once a month to contact the school's engineer relative to the steam supply.

<sup>6</sup> A representative of the Petitioner testified that it would take about 2 years' experience for a production employee to be able to operate the equipment in the Employer's boiler room, that one of the Employer's firemen and watchmen had had "a lot of experience in operating various types of boilers," and that a production or maintenance employee "would not be in a position intelligently to operate the equipment." The Employer's works manager testified that, while production employees are not capable of taking over the duties of the engineer, an average production employee could be taught to perform the duties of the firemen and watchmen in a week.

<sup>7</sup> The Employer has a small maintenance crew consisting of a millwright, an electrician, and a carpenter.

when the job is too big for the boiler room personnel to handle.<sup>8</sup> Moreover, the engineer or the firemen and watchmen are sometimes assisted by maintenance employees when repairing production machines equipped for air, water, or steam.

The boiler room operates on three 8-hour shifts, while the remainder of the plant has only two 8-hour shifts.<sup>9</sup> The engineer is on duty during the day shift.<sup>10</sup> The three firemen and watchmen rotate shifts; the one on the night shift also acts as the plant's sole watchman, making regular rounds of the plant. The duties as watchman, however, occupy less than half of the firemen and watchmen's time.<sup>11</sup>

During the summer, for about 4 months each year, the boilers are shut down. The cleaning and repair of the boilers occupies the boiler room personnel for approximately 5 or 6 weeks. During the remaining summer period of about 2½ months, the boiler room employees perform other duties wherever needed, such as cutting the lawn and doing production work in the factory.

The contract between the Employer and the Intervenor calls for straight plant seniority. All employees share the same time clocks, recreation room, and sanitary facilities. All are accorded equal vacation privileges, share in a life insurance plan, and receive a bonus on an equal basis.

The boiler room employees are paid on an hourly rate,<sup>12</sup> while the production workers are on a piecework basis. Moreover, the production and maintenance employees receive time and a half for overtime under the contract, whereas boiler room employees do not. The engineer's pay is roughly equivalent to that of the average pay of the production workers, but the pay of the firemen and watchmen is below that average.

In view of the foregoing, we find, contrary to the contention of the Employer and the Intervenor, that the employees in the boiler room constitute a homogeneous, identifiable group, traditionally found capable of bargaining as a separate unit. They may, if they desire,

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<sup>8</sup> There were approximately 25 instances of this in the 6-month period preceding the hearing. Production employees who are called upon to assist in the boiler room on these occasions are required to help only in steam fitting.

<sup>9</sup> Boiler room shifts are 7 a. m. to 3 p. m., 3 p. m. to 11 p. m., and 11 p. m. to 7 a. m. The first plant shift is 7 a. m. to 12 a. m. and 1 p. m. to 4 p. m., and the second plant shift is 4 p. m. to 8 p. m. and 8:30 p. m. to 12:30 a. m.

<sup>10</sup> The engineer serves an 8-hour shift as watchman on Saturdays and Sundays.

<sup>11</sup> A representative of the Petitioner testified that the time involved in watching is only about 20 percent of the entire time on the shift. The Employer's works manager estimated that the making of hourly rounds occupies from 20 to 35 minutes. As the watchman's duties are not the primary duties of the firemen and watchmen, we find that these employees are not guards within the meaning of the Act. *Matter of Morowebb Cotton Mills Company*, 75 N. L. R. B. 987; *Matter of Carolina Metal Products, Inc.*, 76 N. L. R. B. 644; and *Matter of Warwick Lumber Company*, 78 N. L. R. B. 107.

<sup>12</sup> The pay of the boiler room employees remains constant throughout the year, despite their different duties during the summer months.

constitute an appropriate unit, notwithstanding their bargaining history on a more inclusive basis.<sup>13</sup> However, we shall make no unit determination, pending the outcome of the election hereinafter directed.

We shall direct an election by secret ballot among the Employer's firemen and watchmen, excluding supervisors<sup>14</sup> and all other employees. If the employees in this voting group select the Petitioner, they will be taken to have indicated their desire to constitute a separate bargaining unit.

### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Jacobsen Mfg. Co., Racine, Wisconsin, 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 voting group described in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of the 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 they desire to be represented, for purposes of collective bargaining, by International Union of Operating Engineers, Local Union No. 309 & 309A, AFL, or by International Union, United Automobile, Aircraft and

<sup>13</sup> *Matter of General Foods Corporation, Corn Mill Division*, 54 N. L. R. B. 596; *Matter of E. I. du Pont de Nemours & Company, Inc.*, 66 N. L. R. B. 631; *Matter of L. E. Shunk Latex Products, Inc.*, 67 N. L. R. B. 552; *Matter of E. W. Bliss Company, Toledo Works*, 76 N. L. R. B. 475; *Matter of The American Sugar Refining Company*, 76 N. L. R. B. 1009; *Matter of Kalamazoo Vegetable Parchment Company*, 76 N. L. R. B. 1015; *Matter of Smith Paper, Incorporated*, 76 N. L. R. B. 1226; *Matter of Kendall Mills-Finishing Division of The Kendall Company*, 77 N. L. R. B. 385; *Matter of Sun Chemical Corporation*, 77 N. L. R. B. 1096; *Matter of Kimberly-Clark Corporation*, 78 N. L. R. B. 102; *Matter of Worthy Paper Company Association*, 80 N. L. R. B. 19; *Matter of Crocker, Burbank and Co., Assn.*, 80 N. L. R. B. 774; *Matter of Wilson & Co., Inc.*, 80 N. L. R. B. 1463; *Matter of Wilson and Co., Inc.*, 80 N. L. R. B. 1466; *Matter of Swift and Company*, 81 N. L. R. B. 333; *Matter of Swift and Company, d/b/a H. L. Handy Company*, 81 N. L. R. B. 425, and *Matter of Mathieson Chemical Corporation*, 82 N. L. R. B. 250. But compare *Matter of Monsanto Chemical Company*, 80 N. L. R. B. 1675.

<sup>14</sup> The engineer has authority to discipline the firemen and watchmen. Accordingly, we find that he is a supervisor within the meaning of the Act, and shall exclude him from the voting group.

Agricultural Implement Workers of America, Sub Regional Office, Local 556, CIO, or by neither.

MEMBER GRAY, dissenting:

I would dismiss the petition on the ground that it would not be appropriate in this case to permit the severance of a unit of firemen and watchmen from the existing production and maintenance unit for which the Intervenor has bargained for the past 10 years. In reaching this conclusion I am chiefly motivated by the fact that for a period of at least 2½ months during the shut-down of the boiler room in the summer, the firemen and watchmen are required to do regular production work along with the other production employees. It would not, in my opinion, effectuate the policies of the Act to eliminate the causes of obstructions to the free flow of commerce by establishing two units covering employees doing the same work over such a substantial period.