In the Matter of YORK CORPORATION, EMPLOYER *and* REFRIGERATION FITTERS PROTECTIVE ASSOCIATION, INC., ALSO KNOWN AS LOCAL UNION 508, PETITIONER

Case No. 21–RC–864.—Decided December 13, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Ben Grodsky, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-member panel [Members Houston, Reynolds and Murdock].

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 involved claim to represent certain employees of the Employer.[1]

3. A question affecting commerce exists 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.

4. The unit requested by the Petitioner, as amended at the hearing, consists of all refrigeration journeymen, fabricators, welders and their apprentices working in the shop of the Employer, but excluding hand welders, guards, professional employees and supervisors as defined in the Act. The Employer agrees that the requested unit is

[1] Upon sufficient showing of interest made to the hearing officer at the hearing, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada, Local Union 250, AFL, was allowed to intervene in these proceedings. We find no merit in the contention of the Petitioner that Local 250 lacked proper interest to be admitted to the status of intervenor. See *Walt Disney Productions*, 76 NLRB 121. On the basis of the record herein, we also reject the argument of the Intervenor that the Petitioner is fronting for an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL. See *Baker Ice Machine Company*, 86 NLRB 385.

appropriate.[2] The Intervenor contends that employees engaged in outside construction work as well as those working in the shop should be included in the unit and that two individuals should be excluded as supervisors.

The shop employees and those employees engaged in outside construction work for the Employer both utilize similar skills and work on the same type equipment. There is a limited amount of interchange between the two groups consisting of infrequent transfers of outside construction men to the shop in periods of slack business, and assignments of men, in the shop, to work on outside construction to satisfy peak requirements for labor in that field. This interchange is restricted, however, to a small percentage of the time of a minority of the men in each group. The Employer regards the two groups of employees as being separate and distinct classifications. The record also shows that the working conditions in the case of the employees in outside construction are substantially dissimilar from those of the shop workmen. Moreover, the shop personnel and the outside employees have, in the past, worked under separate collective bargaining contracts, and, as a result, have substantial differences in wage rates and benefits such as vacations. Upon the entire record, we believe that the interests and working conditions of the shop employees and the outside construction employees are divergent and we shall exclude the latter from the unit hereinafter found appropriate.

The Intervenor also contends that Robert E. Hall and Conrad Martinez are supervisors and should be excluded from the unit. Hall is a shop fabricator who has no power to hire or discharge, or effectively to recommend such actions. There is no evidence in the record as to his having any supervisory authority. Conrad Martinez is a working foreman in the shop who receives a pay rate slightly higher than the base rate. He has no power to hire or discharge nor can he effectively recommend such action. There is no shop foreman, and a shop superintendent is in charge of all functions including the fabricating department, the warehouse, and the stockroom. In the superintendent's absence, the chief engineer assumes control. Martinez, under the direction of the superintendent, lays out the work to be done and occasionally directs other employees in the performance of assigned tasks as well as working with tools himself. In the course of this routine direction, Martinez may comment on the qualifications of the men, or if he does not like a certain employee, may have a new man assigned to his crew. We do not believe the record shows that

[2] The Employer requested that warehouse and stockroom employees be specifically excluded from the unit. As neither the Petitioner nor the Intervenor expressed a desire to represent these employees and as they appear to be clearly outside the scope of the unit, we shall exclude the warehouse and stockroom employees.

Martinez is vested with the authority of a supervisor within the meaning of the Act.[3] Accordingly we find that neither Hall nor Martinez is a supervisor and we shall include them in the unit.

We find that all refrigeration journeymen, fabricators, welders and their apprentices working in the shop of the Employer at Los Angeles, California, but excluding hand welders, outside construction employees, warehouse and stockroom employees, guards, professional employees, and supervisors within the meaning of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION[4]

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, 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 they desire to be represented, for purposes of collective bargaining, by Refrigeration Fitters Protective Association, Inc., also known as Local Union 508, or by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada, Local Union 250, AFL, or by neither.

[3] See *Standard Oil Company of California*, 79 NLRB 1466; *Marshall Field & Company*, 76 NLRB 479.

[4] The Employer stated at the hearing that it believed the election directed in this proceeding should be postponed to occur at a time when an election might be directed for a unit of the outside construction employees also. Inasmuch as we have no proceeding presently before us involving the outside construction employees, we do not believe it would serve the interests of the parties and the purposes of the Act to indefinitely forestall the resolution of the instant question concerning representation. Accordingly we shall order an immediate election.