

In the Matter of WASHINGTON METAL TRADES, INC., AND YOUNG IRON
WORKS and UNITED BROTHERHOOD OF WELDORS, CUTTERS & HELPERS
OF AMERICA, LOCAL 9, INDEPENDENT

Case No. 19-R-1418.—Decided April 4, 1945

*Grosscup, Morrow & Ambler, by Messrs. John Ambler and George
D. Leonard, of Seattle, Wash., for the Association and the Company.
Mr. Roy J. Evett, of Seattle, Wash., for the Weldors.
Mr. L. Presley Gill, of Seattle, Wash., for Local 79.
Mr. Harry Nathanson, of-counsel to the Board.*

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Brotherhood of Weldors, Cutters & Helpers of America, Local 9, Independent, herein called the Weldors, alleging that a question affecting commerce had arisen concerning the representation of employees of Washington Metal Trades, Inc., Seattle, Washington, herein called the Association, and Young Iron Works, Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Seattle, Washington, on February 9, 1945. The Association, the Company, the Weldors, and the International Association of Machinists, Local No. 79, AFL, herein called Local 79, appeared and participated. All parties were afforded an opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing Local 79 moved to dismiss the petition and the Trial Examiner referred the motion to the Board for determination. For reasons set forth in Sections III and IV, *infra*, the motion is denied. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE ASSOCIATION AND THE COMPANY

Washington Metal Trades, Inc., is a Washington corporation operating as a non-profit trade association and consisting of approximately 43 member companies engaged in the metal trades manufacturing industry in Seattle, Washington. It represents its member companies in bargaining negotiations and executes collective bargaining agreements on their behalf. Among its members is the Young Iron Works.

Young Iron Works, a Washington corporation with its principal office and plant located at Seattle, Washington, is engaged in the operation of a forge and machine shop, manufacturing products and equipment for ships and logging. Monthly, the Company purchases raw materials valued at approximately \$40,000, of which approximately 65 percent is shipped to it from points outside the State of Washington. For the same period the Company's gross sales approximate \$125,000, of which 90 percent is shipped to points outside the State of Washington.

We find that the Association and the Company are engaged in commerce within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATIONS INVOLVED

United Brotherhood of Weldors, Cutters & Helpers of America, Local 9, is an unaffiliated labor organization admitting to membership employees of the Company.

International Association of Machinists, Local No. 79, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In September 1944 the Weldors requested the Company to recognize it as the exclusive bargaining representative of the Company's welders and cutters. On October 5, 1944, the Association, on behalf of the Company, replied that recognition would be accorded any union that was certified by the Board.

Since 1937 the Association, on behalf of its members, including the Company, negotiated and executed collective bargaining agreements with Local 79. In 1942, the Association entered into a written

¹ In *Matter of Washington Metal Trades, Inc.*, 43 N. L. R. B. 158, the parties agreed, and we found that the Association was subject to the jurisdiction of the Board.

collective bargaining agreement with Local 79 which provided, in part, as follows:

This Agreement will become effective retroactively to April 1, 1942 and shall remain in effect until May 31, 1943, unless changed by mutual consent. Should either party desire to change, modify, or terminate the agreement at the expiration of such period, written notice must be given to the other party thirty (30) days in advance of May 31, 1943. If such notice is not given within such time, the Agreement shall be considered as automatically renewed for an additional period of one year and in like manner from year to year thereafter.

In April 1943 Local 79, in accordance with the terms of the agreement, served notice on the Association requesting it to negotiate changes. Negotiations were conducted, but the contracting parties failed to agree, and the issues between them were referred to the Twelfth Regional War Labor Board for settlement.² As of the date of the hearing herein, although all matters in dispute had been resolved, Local 79 and the Association had not entered into a new written agreement.

While Local 79 and the Association assert that the contract of December 22, 1942, is a bar to this proceeding, it is clear that Local 79's request in April 1943 forestalled the operation of the automatic renewal clause contained in that agreement and caused its termination as of May 31, 1943. Moreover, since Local 79 was not a newly certified or recognized union at the time the proceedings before the War Labor Board were initiated and, since 1937, had obtained for the employees it represented substantial benefits of collective bargaining, we find no reason to delay a current determination of representatives.³

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Weldors represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 DETERMINATION OF REPRESENTATIVES

The Weldors seeks a unit of all the Company's welders and cutters,⁵ excluding supervisory employees. The Company takes no position with respect to the unit sought except to urge that the welding foreman

² W. L. B. Case No 111-5082-D.

³ See *Matter of General Metals Corporation*, 59 N. L. R. B. 1252.

⁴ The Field Examiner reported that the Weldors submitted five authorization cards and that there were five employees in the alleged appropriate unit. Local 79 relies on its contract to substantiate its interest in this proceeding.

⁵ The Company refers to these employees as welders and burners.

be excluded. Local 79 and the Association contend that a separate unit of welders and cutters is inappropriate, and that such employees should be included in a unit of all pooled production and maintenance workers employed by all members of the Association.

All but one of the Company's welders and cutters are employed in its prefabrication shop, located in a separate building; one welder works in the machine shop, where, for the most part, he is set apart from other employees. All these employees devote their entire time to welding and cutting. First shift welders and cutters in the prefabrication shop are under the supervision of a working welding foreman. The welder in the machine shop and the only welder on the second shift in the prefabrication shop work under the supervision of a machine shop foreman,⁶ but they perform the same type of work done by first shift welders in the prefabrication shop. The working welding foreman spends approximately 75 percent of his time working with the tools of his trade, and he devotes the balance of his time to laying out and assigning work. The record is clear that this employee has no authority effectively to recommend hire, discharge, promotion, or other changes in the status of employees. Thus, all welders and cutters employed by the Company, including the working welding foreman, form a clearly identifiable and separate group performing specialized functions, which, absent a compelling history of collective bargaining on a more comprehensive basis, could constitute an appropriate unit.

In *Matter of Markey Machinery Co.*,⁷ the history of collective bargaining between Local 79 and the Association,⁸ and the Weldors' activities in the Seattle Region, are described as follows:

The Association was organized in 1936 and since that time has negotiated annual bargaining agreements with various A. F. L. affiliates, on behalf of its members and other companies which have expressly so authorized it. About the same time a movement began among the welders in the Seattle area to establish themselves as a separate bargaining group. As a result, in 1936 the A. F. L. Boilermakers' Union chartered a separate local of Boilermakers Welders and in 1937 the I. A. M. granted a charter to Machinists Welders, Local 1351. All machinist welders in Local 79, the I. A. M. local here involved, transferred their affiliation to Local 1351. Thereafter the welders maintained a separate identity and in some instances entered into separate contracts with the Association, acting on behalf of its member

⁶ It appears that there is not enough work to warrant the employment of a welding foreman on the second shift in the prefabrication shop.

⁷ 54 N. L. R. B. 251, decided January 4, 1944.

⁸ As noted above, the Association has been acting for the Company since 1937.

firms which employed welders. Toward the end of 1941, however, the A. F. L. rejected the welders' plea for a separate international welders' union and directed its affiliates to disestablish their separate welders' locals. The I. A. M. and its Local 79 directed the welders to reaffiliate with Local 79. Instead of reaffiliating with the I. A. M., the members of Local 1351 organized an independent welders' union which ultimately became one local of the Weldors. When the welders broke away from the A. F. L., the Association continued to bargain only with the A. F. L. unions, which proceeded again to include welders within the provisions of their contracts. Thus the Association, in September 1942, negotiated on behalf of the [Markey Machinery Co., Inc.] a contract with the I. A. M. which purported to cover welders. However, there is no evidence that the welders, following the organizational schism, have ever acquiesced in the attempt to merge them into the various A. F. L. craft units. On the contrary, the fact that the Weldors petitioned for an election among the [Markey Machinery Co. Inc.'s] welders in January 1942,⁹ and are still demanding separate bargaining rights for welders demonstrates a clear refusal to accede to such a merger. Thus, it appears that there has been no bargaining in a unit of welders on an Association-wide basis for approximately 2 years. Any bargaining in welders' units on an Association-wide basis which may once have been carried on ceased too long ago to be persuasive in the instant proceeding. We find that welders in the [Markey Machinery Co., Inc.'s] employ may properly constitute an appropriate unit.

In view of all the foregoing facts, it appears that all welders and cutters employed by the Company, including the working welding foreman, may properly constitute an appropriate unit, or be bargained for as part of the unit Local 79 currently represents. We shall, therefore, make no finding at this time as to the appropriate unit, but shall first ascertain the desires of the employees involved. We shall direct that an election by secret ballot be held among all the Company's welders and cutters, including the working welding foreman, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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, to determine whether they

⁹ *Matter of Washington Metal Trades, Inc.*, *supra*; the Company was one of the employers named in the petition in that case. The Board dismissed the petition without determining the issues presented in the instant proceeding.

desire to be represented by the Weldors, or by Local 79, for the purposes of collective bargaining, or by neither. Upon the results of such election will depend, in part, our determination of the appropriate unit. If a majority of those participating in the election select the Weldors, they will have indicated their desire to constitute a separate bargaining unit. If a majority select Local 79, they will have indicated their desire to be part of the unit presently represented by Local 79.

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 Washington Metal Trades, Inc. and Young Iron Works, 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 of Election, 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 all welders and cutters of Young Iron Works, Seattle, Washington, including the working welding foreman, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of this Directiton, 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 United Brotherhood of Weldors, Cutters & Helpers of America, Local 9, Independent, or by International Association of Machinists, Local No. 79, AFL, for the purposes of collective bargaining, or by neither.