

In the Matter of PACIFIC CAR AND FOUNDRY COMPANY *and* UNITED
STEELWORKERS OF AMERICA, C. I. O.

In the Matter of PACIFIC CAR AND FOUNDRY COMPANY *and* BILLINGS,
MONTANA, METAL TRADES COUNCIL

*Cases Nos. 19-R-1491 and 19-R-1502, respectively.—Decided
April 17, 1945*

Mr. Curtis E. Lees, of Billings, Mont., for the Company.

Mr. Varro C. Jones, of Salt Lake City, Utah, for the U. S. A.

Mr. John T. Curtis of Spokane, Wash., and *Mr. Harvey E. Lynde*,
of Billings, Mont., for the M. T. C.

Mr. Louis Cokin, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon separate petitions duly filed by United Steelworkers of America, herein called the U. S. A., and Billings, Montana, Metal Trades Council, A. F. of L., herein called the M. T. C., alleging that questions affecting commerce had arisen concerning the representation of employees of Pacific Car and Foundry Company, Billings, Montana, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Billings, Montana, on February 26, 1945. The Company, the U. S. A., and the M. T. C. appeared at and participated in the hearing.¹ All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the M. T. C. moved to dismiss the petition in Case No. 19-R-1491. The Trial Examiner re-

¹ Although International Association of Machinists, A. F. of L., herein called the I. A. M., was served with Notice of Hearing, it did not move to intervene at the hearing. However, a representative of the I. A. M. appeared at the hearing and stated that it had ceded its rights and interests in the instant proceeding to the M. T. C., with which it is affiliated.

served ruling thereon. The motion is hereby denied. 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:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pacific Car and Foundry Company has its principal office at Renton, Washington. It operates a plant at Billings, Montana, with which we are here concerned, where it is engaged in assembling M-26 tank retrievers and rebuilding trucks for the United States Army. During 1944 the Company used raw materials at its Billings plant valued in excess of \$1,000,000, all of which was shipped to it from points outside the State of Montana. All products produced by the Company at its Billings, Montana, plant are delivered to points designated by the United States Army.

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

II. THE ORGANIZATIONS INVOLVED

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

Billings, Montana, Metal Trades Council is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 12, 1945, the U. S. A. requested the Company to recognize it as the exclusive bargaining representative of the Company's employees. The Company refused this request.

On March 24, 1944, the Company and the I. A. M. entered into an exclusive bargaining contract. The contract provides that it should remain in full force and effect until April 1, 1945, and from year to year thereafter unless notice of desire to terminate is given by either party thereto not less than 30 days prior to any annual expiration date. As stated hereinabove, the I. A. M. has ceded its rights to the M. T. C. Inasmuch as the U. S. A. made its claim upon the Company prior to March 1, 1945, we find that the contract does not constitute a bar to a present determination of representatives.

Statements of agents of the Board, made a part of the record, indicate that the U. S. A. and the M. T. C. each represents a substantial number of employees in the unit hereinafter found to be appropriate.²

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 U. S. A. urges that all production and maintenance employees at the Billings, Montana, plant of the Company, including inspectors, guards, truck drivers, and leadmen, but excluding general superintendent, assistant superintendents, foremen, the maintenance engineer, project and assistant project engineers, chief timekeeper, chief inspector, and office and clerical employees, constitute a unit appropriate for the purposes of collective bargaining. The only controversy with respect to the unit concerns guards. The Company and the M. T. C. would exclude them from the unit.

The Company employs 11 guards who are armed and deputized by the county within which the Billings, Montana, plant is located. We shall exclude the guards from the unit in accordance with our customary practice of excluding deputized plant-protection employees from units of production and maintenance employees.

We find that all production and maintenance employees at the Billings, Montana, plant of the Company, including inspectors, truck drivers, and leadmen,³ but excluding office and clerical employees, guards, project and assistant project engineers, general superintendent, assistant superintendents, foremen, maintenance engineer, chief timekeeper, chief inspector, 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

² The Field Examiner reported that the U. S. A. presented 221 application cards at the hearing the M. T. C. submitted 60 application cards to the Trial Examiner. The I. A. M. had previously submitted 103 cards. There are approximately 275 employees in the appropriate unit.

³ The record indicates that the leadmen are not supervisory employees within the meaning of the Board's usual definition of supervisory employees.

Election, herein, subject to the limitations and additions set forth in the Direction.

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 Pacific Car and Foundry Company, Billings, Montana, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, 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 Billings, Montana, Metal Trades Council, A. F. of L., or by United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.