

In the Matter of KAISER INDUSTRIES *and* INTERNATIONAL ASSOCIATION OF MACHINISTS LODGE 1047, AFL

In the Matter of KAISER INDUSTRIES *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 467, AFL

In the Matter of KAISER INDUSTRIES *and* CONSTRUCTION, PRODUCTION & MAINTENANCE LABORERS' LOCAL 783 (AFL)

In the Matter of KAISER INDUSTRIES *and* LOCAL B-477, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL

In the Matter of KAISER INDUSTRIES *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, STATIONARY LOCAL UNION No. 63 AND LOCAL UNION No. 12, AFL

In the Matter of KAISER INDUSTRIES *and* UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS LOCAL UNION No. 364, AFL

In the Matter of KAISER INDUSTRIES *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL No. 944, AFL

*Cases Nos. 21-R-2537, 21-R-2545, 21-R-2560, 21-R-2561, 21-R-2563, 21-R-2567, and 21-R-2568, respectively.—Decided April 23, 1945*

*Messrs. Harry F. Morton and Thomas F. Inch, of Oakland, Calif., for the Company.*

*Mr. E. R. White, of Los Angeles, Calif., for the Machinists.*

*Mr. David Sokol, of Los Angeles, Calif., and Mr. J. F. Huffstutler, of San Bernardino, Calif., for the Laborers.*

*Mr. Frank A. Harris, of Los Angeles, Calif., for the Blacksmiths.*

*Mr. John C. Stevenson, of Los Angeles, Calif., and Mr. A. O. May, of San Bernardino, Calif., for the Teamsters.*

*Messrs. Charles S. McKinley and D. E. Huntington, of San Bernardino, Calif., for the Plumbers.*

*Messrs. Lester O. Wilson and James E. Gilliam, of Los Angeles, Calif., for the Operating Engineers.*

*Mr. William W. Robbins, of San Bernardino, Calif., for the Electricians.*

61 N. L. R. B., No. 108.

*Mr. B. W. Ragland*, of San Bernardino, Calif., for the Carpenters.

*Messrs. Katz, Gallagher & Margolis*, of Los Angeles, Calif., and *Messrs. John A. Depol and James Thimmes*, both of Maywood, Calif., for the CIO.

*Mr. A. Sumner Lawrence*, of counsel to the Board.

DECISION  
DIRECTION OF ELECTIONS  
AND  
ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by International Association of Machinists Lodge 1047, AFL, herein called the Machinists; by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 467, AFL, herein called the Teamsters; by Construction, Production & Maintenance Laborers' Local 783, AFL, herein called the Laborers; by Local B-477 International Brotherhood of Electrical Workers, AFL, herein called the Electricians; and by International Union of Operating Engineers, Stationary Local Union No. 63 and Local Union No. 12, AFL, herein called the Operating Engineers; by United Association of Plumbers & Steamfitters, Local Union No. 364, AFL, herein called the Plumbers; and by United Brotherhood of Carpenters and Joiners of America, Local No. 944, AFL, herein called the Carpenters, alleging that questions affecting commerce had arisen concerning the representation of employees of Kaiser Industries,<sup>1</sup> herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before William B. Esterman, Trial Examiner. Said hearing was held at San Bernardino, California, on February 8 and 9, 1945. The Company, all petitioning unions, International Brotherhood of Blacksmiths, Drop Forgers & Helpers, AFL, herein called the Blacksmiths, and United Steelworkers of America, CIO, herein called the CIO, both intervenors, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. 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:

<sup>1</sup> The name of the Company, which was incorrectly set forth as "Kaiser Company, Inc., Shell Division" on the petition filed by the Teamsters and formal papers relating thereto, was amended without objection at the hearing.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Kaiser Industries, a California corporation and wholly owned subsidiary of Henry J. Kaiser Company, has its principal office in Oakland, California, and is engaged in the business of constructing and operating plants for the production of ordnance items for the Ordnance Department of the United States Army. Of the several plants operated by the Company, the only plant involved in the present proceeding is that located at or near Fontana, California, where the Company is engaged in the manufacture of rough finished artillery shells. The annual purchases by the Company of raw materials for use at its Fontana shell plant are valued in excess of \$1,000,000, of which not less than 20 percent originates from points outside the State of California. The entire output of the Company's Fontana plant is shipped to localities outside the State of California for ultimate military use.

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

## II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Lodge 1047; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 467; Construction, Production & Maintenance Laborers' Local 783; Local B-477, International Brotherhood of Electrical Workers; International Union of Operating Engineers, Stationary Local Union No. 63 and Local Union No. 12; United Association of Plumbers & Steamfitters, Local Union No. 364; United Brotherhood of Carpenters and Joiners of America, Local No. 944; and International Brotherhood of Blacksmiths, Drop Forgers & Helpers, are labor organizations, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

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

## III. THE QUESTION CONCERNING REPRESENTATION

The Company stated at the hearing that it declined to recognize as bargaining representatives for its employees any of the petitioning labor organizations unless and until certified by the Board.

Statements of a Field Examiner for the Board and of the Trial Examiner with respect to the authorization evidence submitted by

the AFL Unions and the CIO were introduced in evidence at the hearing.<sup>2</sup>

We find that questions affecting commerce have arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

#### IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

##### A. *The contentions of the parties*

Each of the AFL unions, with the exception of the Machinists and the Laborers, has petitioned for a bargaining unit of craft employees engaged in occupations bringing them within the jurisdiction of the respective petitioners. The Machinists seeks alternative production and maintenance units. Of these, the first excludes the claims of the Carpenters, Plumbers, Teamsters, and certain classifications sought by the Electricians. The second, or alternative unit urged by the Machinists in the event that the units sought by the Carpenters, Plumbers, and Teamsters are inappropriate, consists of a plant-wide unit embracing all non-supervisory production and maintenance employees of the Company's Fontana shell plant, excluding timekeepers. The Laborers seeks a semi-industrial unit of production and maintenance employees wholly excluding the classifications sought by the Teamsters, Plumbers, Carpenters, and Electricians, and partially excluding the classifications claimed by the Operating Engineers. On the other hand, the CIO denies the appropriateness of the units proposed by the AFL unions and contends in the alternative (1) that its outstanding certification covering the production and maintenance employees at an adjoining steel mill operated by a corporation which is also a subsidiary of the parent corporation of the Company, should

<sup>2</sup> The following tabulation sets forth the statements of the Field Examiner and of the Trial Examiner in regard to authorization evidence submitted to them by the organizations herein involved.

Labor organization	Designations submitted	Approximate number in alleged unit	Found on pay roll in alleged unit	Indicated percentage showing
Machinists.....	803	1,600	589	36.8
Teamsters.....	33	34	9	26.4
Laborers.....	61	1,450	55	3.8
Electricians.....	28	39	15	38.4
Operating Engineers.....	69	147	28	19
Plumbers.....	19	17	13	76.4
Carpenters.....	7	12	5	41.6
Blacksmiths.....	37	563	18	3.2
Steelworkers (C. I. O.).....	122	1,600	102	6.3

be construed as applicable to the Company's shell plant employees; and (2) that if an election is to be directed for the shell plant employees, the appropriate unit should be plant-wide without regard to craft distinctions. The Company, while taking no position on the issue of the proposed extension of the CIO's certification to cover shell plant employees, takes substantially the same position as the CIO with respect to an overall unit limited to shell plant employees.

The Company's operations cover approximately 40 acres adjacent to the steel mill operated by Kaiser Company, Inc., the subsidiary previously referred to, and include a portion of the steel mill facilities in a building located on the premises of the latter corporation from which the Company obtains substantially all the steel required for its manufacturing operations. The organization of the Company dates from approximately June 14, 1944, when, in the interest of economy and efficiency with respect to certain contracts for the manufacture of artillery shells, originally awarded by the United States Army on or about April 14, 1944, to Kaiser Company, Inc., there was created a new corporation which, by a novation of the parties, assumed the obligation of performing the shell contracts together with the completion and operation of the several shell plants then in process of construction. Prior to the awarding of such contracts, the Board, in a proceeding affecting the Fontana employees of Kaiser Company, Inc., then engaged in steel mill operations only, issued on February 10, 1944, a certification of the CIO as bargaining representative of the production and maintenance employees of Kaiser Company, Inc., at its Fontana operations.<sup>3</sup> Thereafter, on October 23, 1944, subsequent to the beginning of operations at the Fontana Shell plant and the assumption by the Company of the shell contracts of Kaiser Company, Inc., the latter filed a petition with the Board requesting that the Board determine whether or not the certification of February 10, 1944, was applicable to the shell plant employees. The Board dismissed the petition without prejudice upon the ground that without a hearing no proper basis existed for determining whether or not shell plant employees were a part of the existing bargaining unit.

While it appears that the Company and Kaiser Company, Inc., are controlled by a common parent corporation and have the same president and general manager, the record indicates that they are distinct and independent corporations having separate personnel offices, personnel directors, and plant supervisors; that notwithstanding some interchange of technical personnel upon a loan basis, each company has a separate pay-roll division for its employees; and that facilities exist

<sup>3</sup> 54 N. L. R. B. 1219. Following the certification of the CIO, the latter and Kaiser Company, Inc., executed on June 3, 1944, a collective bargaining agreement for the employees covered by the Board's certification.

for the settlement by the management of each company, of grievances arising at either the shell plant or the steel mill prior to the consideration of such grievances by general counsel and the officials of the parent Kaiser corporation. Moreover, it appears that the shell plant employees have never had an opportunity to express their choice in the selection of a bargaining representative, since the shell plant was not in existence at the time the Board made its previous unit finding with respect to the steel mill operations. Under the circumstances, we are of the opinion that to include the shell plant employees within the unit now represented by the CIO without opportunity to the shell plant employees to choose for themselves whether they desire to be represented in a multiple-employer unit, would not effectuate the purposes of the Act.<sup>4</sup> Accordingly, we find that the certification of the CIO is not applicable to the shell plant employees hereinabove referred to.

There exists the further question as to the type of unit appropriate for the employees of the Company at its Fontana shell plant. While the evidence discloses that the Company's manufacturing process is a highly integrated single-line operation, and that two of the labor organizations herein have organized the shell plant employees upon a plant-wide or semi-plant-wide basis, it is evident that the units sought by at least four of the AFL unions<sup>5</sup> are basically craft in character within the traditional craft jurisdiction of such labor organizations. Accordingly, notwithstanding the highly integrated nature of the Company's operations and the recognized necessity of maintaining the production of materials vital to the war effort,<sup>6</sup> we are of the opinion that, in the absence of any history of collective bargaining among shell plant employees, the craft employees sought by the Teamsters, the Carpenters, the Plumbers and the Electricians, may properly constitute separate bargaining units, or may be merged in a single unit of shell plant employees.<sup>7</sup> In this situation, we shall permit the scope of the bargaining unit or units to be determined, in part, by the results of separate elections among the groups represented by the four unions aforesaid. However, with respect to the units sought by the Blacksmiths, the Laborers,<sup>8</sup> and the Operating Engineers, since it appears

<sup>4</sup> See *Matter of Demuth Glass Works, Inc.*, 53 N. L. R. B. 451; *Matter of Westinghouse Electric & Manufacturing Company*, R-3535, et al (unpublished), issued February 10, 1945.

<sup>5</sup> The Teamsters, Plumbers, Electricians, and Carpenters

<sup>6</sup> The record does not establish the Company's contention that collective bargaining on the basis of craft units will of necessity prevent the Company from making efficient use of its personnel in maintaining war production.

<sup>7</sup> See *Matter of Bohn Aluminum & Brass Corporation*, 52 N. L. R. B. 1305; *Matter of Remington Arms Company, Inc.*, 54 N. L. R. B. 338.

<sup>8</sup> In addition to the unit herein specifically proposed, the Laborers claims representation in a plant-wide unit which it urges as an alternative for the unit based on its petition aforesaid

from overlapping jurisdictional claims and the inclusion of classifications not readily distinguishable from omitted classifications, that the proposed units constitute heterogeneous groups, incapable of precise definition and without distinct departmental or craft characteristics, we find such units inappropriate and shall dismiss the petitions filed herein by these labor organizations.<sup>9</sup>

### B. *The voting units*

There remains for consideration the specific composition of the voting units.

As previously indicated, the Teamsters, the Electricians, the Plumbers, and the Carpenters, seek units which are basically craft in character. However, both the Teamsters and the Electricians would include within their respective groups certain classifications not traditionally a part of the crafts of such organizations. In the case of the Teamsters, the proposed unit would include in addition to the recognized craft group of outside truck drivers,<sup>10</sup> various plant clerical employees under the classifications of issue and receiving clerks, warehouse clerks, and warehouse leadmen. Similarly, the Electricians would include crane operators<sup>11</sup> in the same group with numerous craft electrical employees. While we agree with the Teamsters and the Electricians in their assertion of homogeneity for their respective groups of craft employees, we cannot accept their proposed units in the form in which they are requested. We shall, therefore, limit the proposed units of the Teamsters and the Electricians to those classifications which are a part of their traditional craft jurisdiction.<sup>12</sup>

With respect to the residual group of production and maintenance employees, the Machinists, the Laborers,<sup>13</sup> and the CIO are in substantial agreement in regard to the classifications to be included or excluded therefrom. The only serious dispute concerns the classification of timekeepers whom the Machinists would exclude from the production and maintenance group. The evidence reveals that while the timekeepers herein concerned work throughout the plant, they are pay-roll accounting employees under the supervision of the paymaster through the chief timekeeper and have no interests or duties paralleling those of the production and maintenance employees. In view of this dissimilarity of duties and interest, we shall, in accordance

---

<sup>9</sup> See *Matter of The Weisberg Baer Company*, 47 N. L. R. B. 26; *Matter of Monsanto Chemical Company*, 55 N. L. R. B. 1452.

<sup>10</sup> See *Matter of All-Steel-Equip Company, Inc.*, 60 N. L. R. B. 1305

<sup>11</sup> The Board has held that crane operators are not property within a craft unit of electrical employees. See *Matter of Westinghouse Electric & Manufacturing Company*, 53 N. L. R. B. 1

<sup>12</sup> See *Matter of Bohn Aluminum & Brass Corporation*, 52 N. L. R. B. 1305.

<sup>13</sup> See footnote 8, *supra*.

with our usual practice, exclude timekeepers from the voting group of production and maintenance employees.<sup>14</sup>

• The Company without opposition requests that the employees on its separate construction pay roll be excluded from the production and maintenance group. The request is hereby granted.<sup>15</sup>

Upon the entire record in the case and in accordance with the foregoing findings of fact, we shall order elections among the employees of the Company within the groups described below, excluding therefrom all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action:

1. All outside truck drivers employed by the Company with respect to its shell plant operations at Fontana, California;

2. All electrical repairmen A, B, and C; instrument men, A, B, and C; and lead electrical repairmen, employed by the Company with respect to its shell plant operations at Fontana, California;

3. All pipe fitters A and B, and lead pipe fitters, employed by the Company with respect to its shell plant operations at Fontana, California;

4. All carpenters, A and B, and lead carpenters, employed by the Company with respect to its shell plant operations at Fontana, California;

5. All remaining production and maintenance employees of the Company at its shell plant operations, Fontana, California, including leadmen, plant clerical employees,<sup>16</sup> but excluding all other clerical employees, timekeepers, executive and administrative employees, foremen, office employees, plant-protection employees,<sup>17</sup> technical and professional employees, and all employees on the Company's separate construction pay roll.

As stated above, there will be no final determination of the appropriate unit or units pending the results of elections. This determination will, in part, depend upon the choice made by the employees eligible to participate in such elections.

We shall direct that the employees of the Company eligible to vote in the elections shall be those who were employed during the pay-roll period immediately preceding the date of the Direction of Elections,

<sup>14</sup> See *Matter of Douglas Aircraft Company, Inc.*, 60 N L R B 876

<sup>15</sup> See *Matter of Kaiser Company, Inc., Iron and Steel Division*, 53 N L R B 880, where the Board excluded similar construction pay-roll employees from a unit of production and maintenance employees

<sup>16</sup> Included under this classification are issue and receiving clerks, warehouse clerks, and warehouse leadmen.

<sup>17</sup> Excluded under this classification are watchmen, guards, firemen, and first-aid employees.

subject to such limitations and additions as are set forth in the Direction.<sup>18</sup>

### DIRECTION OF ELECTIONS

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 Kaiser Industries, Fontana, California, separate elections 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 Twenty-first 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 those employees who fall within the groups indicated below and 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 elections:

1. The employees in the first voting group described in Section IV, above, to determine whether they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 467, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither;

2. The employees in the second voting group described in Section IV, above, to determine whether they desire to be represented by Local B-477, International Brotherhood of Electrical Workers, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither;

3. The employees in the third voting group described in Section IV, above, to determine whether they desire to be represented by United Association of Plumbers & Steamfitters Local Union No. 364 AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither;

---

<sup>18</sup> We shall accord the Laborers a place on the ballot for the production and maintenance group, although its showing of representation as a petitioning labor organization would not ordinarily be considered adequate to justify the holding of an election, since it appears that the Laborers has made some showing of representation in the overall group for which upon other grounds an election is to be directed. See *Matter of Castle Dome Copper Co., Inc.*, 52 N. L. R. B. 135.

4. The employees in the fourth voting group described in Section IV, above, to determine whether they desire to be represented by United Brotherhood of Carpenters and Joiners of America, Local No. 944, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining, or by neither;

5. The employees in the fifth voting group described in Section IV, above, to determine whether they desire to be represented by International Association of Machinists, Lodge 1047, AFL, or by Construction, Production & Maintenance Laborers Local 783, AFL, or by United Steelworkers of America, CIO, for the purposes of collective bargaining or by none of these organizations.

### ORDER

IT IS HEREBY ORDERED that the petitions for investigation and certification of representatives of employees of Kaiser Industries, Fontana, California, filed herein by International Union of Operating Engineers, Stationary Local No. 63 and Local Union No. 12, AFL, and by Construction, Production & Maintenance Laborers Local 783, AFL, be, and they hereby are, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision, Direction of Elections, and Order.