

WORTHINGTON PUMP AND MACHINERY CORPORATION *and* INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS AND MAINTENANCE MEN, LOCAL 55, PETITIONER. *Cases Nos. 2-RC-2433 and 2-RC-2498. February 28, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before I. L. Broadwin, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.

3. The question concerning representation:

United Steelworkers of America, CIO, herein called the Intervenor, and its Local 1833, have for a number of years been the contractual representatives of a unit of production and maintenance employees at the Employer's Harrison, New Jersey, plant, the only plant herein involved. On June 15, 1950, representatives of the Employer, of Local 1833, and of District No. 2 of the CIO executed a bargaining agreement covering the same unit.¹ This agreement contained the following provision:

If and when the Union complies with that section of the Labor Management Relations Act of 1947 concerned with elections for Union Shop, or if Congress removes such requirement, the following shall become effective.

(a) Any employee who is a member of the Union at such time shall, as a condition of employment, maintain his membership in the Union to the extent of paying membership dues.

On June 15, 1950, the Petitioner filed a petition seeking an election among employees of the Employer's powerhouse. On July 10, 1950, the Petitioner filed a petition seeking an election among the railroad employees of the Employer's yard department.

¹ It appears that this agreement was executed by the president and secretary-treasurer of the United Steelworkers, CIO, sometime later. In view of our disposition of the question concerning representation on other grounds, we do not find it necessary to discuss the other contract bar issues.

On July 12, 1950, a union-authorization election was held, and on July 20, 1950, Local 1833 was certified by the Board as authorized to make or enforce certain types of union-security provisions. As the provision for union security quoted above requires as a condition of employment maintenance-of-membership in the Union on the effective date of the provision rather than "on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . .," it appears that the provision exceeds the limited form of union-security permitted by Section 8 (a) (3) of the Act. Although at the time of the filing of the petitions, the operation of the illegal clause was effectively suspended,² the provision became operative after the Board's certification of Local 1833 on July 20, 1950.³ From that date, the June 1950 agreement was ineffectual as a bar by reason of its provision for a type of union security not authorized by the Act.⁴

Accordingly, we find that 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 appropriate unit:

The Petitioner seeks to sever from the production and maintenance unit two separate units, one composed of the powerhouse employees and the other of the railroad employees in the yard department. The Employer and the Intervenor contend that the only appropriate unit is the production and maintenance unit.

The powerhouse employees.—This department is composed of 23 employees who are classified as engineers, firemen, oilers, boiler cleaners, boiler cleaner leader, and powerhouse maintenance mechanic. The group as a whole is separately housed, separately supervised, and receives an average wage considerably lower than that of other skilled maintenance and nonincentive workers. Engineers and firemen must have licenses from the State of New Jersey. As it appears that these employees form a distinct homogeneous group of a type traditionally granted separate representation, we shall direct an election to ascertain their desires.⁵

The railroad employees.—The Petitioner seeks to sever nine employees of the yard department, four of whom are locomotive crane engineers, one of whom is a locomotive engineer, and four of whom are brakemen. The engineers fire, operate, and service yard steam

² *Gulf Shipyards Storage Corporation*, 91 NLRB 181.

³ *Kingston Cake Company, Inc.*, 91 NLRB 447.

⁴ *Shepherd Manufacturing Company, Inc.*, 90 NLRB 2196, *The National Foundry & Furnace Company*, 88 NLRB 1083

⁵ *Baugh and Sons Company*, 82 NLRB 1399.

cranes or yard switch engines which run on the mile of track, switches, and spurs in the Employer's yard. These five employees are all required to have licenses, and their duties, which necessitate the observance of a large number of safety precautions, are not interchangeable with those of other employees in the yard department. The brakemen throw switches for the locomotive and steam cranes and signal to the engineers. The work of the brakemen, however, requires only 2 or 3 days of instruction and is often performed by yard laborers whose duties the brakemen, in turn, may sometimes perform.

The engineers perform work distinguishable from that of any other employees, and constitute a craft group which the Board customarily accords an opportunity for separate representation even where there has been a history of collective bargaining on a broader basis.⁶ The duties of the brakemen, however, do not appear to justify severing them from the other yard employees whose interests they share more closely than they do those of the engineers. Accordingly, we shall direct an election among the locomotive and locomotive crane engineers in the Employer's yard department.

In accordance with the foregoing determinations, and in order to ascertain the desires of the powerhouse employees and of the engineers as to inclusion in a single unit with hourly rated production and maintenance employees, we shall direct separate elections in the following voting groups, excluding from each all other employees, guards, and supervisors:

(1) All powerhouse employees, including engineers, firemen, oilers, boiler cleaners, the boiler cleaner leader, and the powerhouse maintenance mechanic.

(2) All licensed locomotive engineers, including locomotive crane engineers, but excluding brakemen.

If a majority of the voting employees in these separate voting groups select the Petitioner, they will be taken to have indicated their desire to constitute separate bargaining units. If a majority vote for the Intervenor, they will be taken to have indicated their desire to remain part of the larger unit represented by the Intervenor.

[Text of Direction of Elections omitted from publication in this volume.]

⁶ *Kaiser Steel Corporation*, 87 NLRB 643; *General Motors Corporation*, 64 NLRB 688.