

In the Matter of WEBER SHOWCASE & FIXTURE CO., INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS, FOR ITSELF AND ON BEHALF OF LODGE 311

Case No. 21-R-2575.—Decided April 17, 1946

Messrs. W. S. Palette and C. S. Meyers, both of Los Angeles, Calif., for the Company.

Messrs. E. R. White, Russell G. Benedict, Dale O. Reed, and Robert D. Peery, all of Los Angeles, Calif., for the Machinists.

Messrs. Arthur Garrett, C. F. Mall, C. H. Burge, Earl E. Thomas, C. F. Naccarato, W. T. Blaney, Lenard Graham, C. C. Collins, E. D. Boyd, and F. V. McKenney, all of Los Angeles, Calif., for the Building Trades.¹

Mr. David V. Easton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Association of Machinists, for itself and on behalf of Lodge 311, herein called the Machinists, alleging that a question affecting commerce had arisen concerning the representation of employees of Weber Showcase & Fixture Co., Inc., Los Angeles, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William T. Whitsett, Trial Examiner. The hearing was held at Los Angeles, California, on various dates between August 2 and 17, 1945, inclusive. The Company; the Machinists; and Los Angeles Building and Construction Trades Council, herein called the Council, Los Angeles County District Council of Carpenters and

¹ The following organizations affiliated either directly or indirectly with the Building Trades were represented by counsel at the hearing. Los Angeles County District Council of Carpenters; Millmen and Cabinet Makers Local Union No. 721, United Brotherhood of Carpenters and Joiners of America, Sheet Metal Workers International Association, Local Unions Nos 108 and 371; Brotherhood of Painters, Decorators & Paperhangers of America, Local Union 792; International Union of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 389; United Association of Plumbers, Steamfitters and Refrigeration Fitters of the United States and Canada, Local Union No. 508.

Millmen and Cabinet Makers Local Union No. 721 of United Brotherhood of Carpenters and Joiners of America, herein collectively called the Carpenters; United Association of Plumbers, Steamfitters and Refrigeration Fitters of the United States and Canada, Local Union No. 508, herein called the Plumbers; Brotherhood of Painters, Decorators & Paperhangers of America, Local Union 792, herein called the Painters; Sheet Metal Workers International Association, Local Unions Nos. 108 and 371, herein called Metal Workers 108 and 371, respectively; and International Union of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 389, herein called the Teamsters, all referred to collectively herein as the Building Trades, 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 Building Trades moved at the hearing for a dismissal of the petition herein. The Trial Examiner referred this motion to the Board for determination. For reasons stated in Section III, *infra*, the motion is hereby denied.

On February 7, 1946, the Board issued an Order Reopening Record and Remanding Proceeding to Regional Director for Further Hearing. Pursuant thereto, a further hearing was held upon due notice at Los Angeles, California, on February 20 and 22, 1946, before William T. Whitsett, Trial Examiner. The Company, the Machinists and the Building Trades appeared, participated, and 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 original and at the reopened hearing are free from prejudicial error and are hereby affirmed. All parties have been 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

Weber Showcase & Fixture Co., Inc., a Delaware corporation, is engaged in the manufacture, sale and distribution of store and office fixtures and equipment; in addition, it has been and still is, to some extent, engaged in the manufacture, sale and distribution of miscellaneous items under contract with the United States Army, Navy, and Maritime Commission. For these purposes it operates a plant at Los Angeles, California, with which we are concerned herein. During the fiscal year ending December 31, 1944, the Company purchased raw materials consisting principally of lumber, plywood, steel, paint, and fibre grass valued at approximately \$10,300,000. During the

same period, the Company manufactured finished products valued at approximately \$15,000,000, substantially all of which was sold and shipped by it or by others to purchasers outside the State of California.

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 and its Lodge 311 are labor organizations admitting to membership employees of the Company.

Los Angeles Building and Construction Trades Council; Los Angeles County District Council of Carpenters; Millmen and Cabinet Makers Local Union 721 of United Brotherhood of Carpenters and Joiners of America; United Association of Plumbers, Steam Fitters and Refrigeration Fitters of the United States and Canada, Local Union No. 508; Brotherhood of Painters, Decorators & Paperhangers of America, Local Union 792; Sheet Metal Workers International Association, Local Unions Nos. 108 and 371; and International Union of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 389, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 26, 1945, the Machinists requested recognition from the Company as the representative of certain of its employees. The Company refused to grant this request in the absence of certification by the Board. The Company and the Building Trades raise contracts to which they are parties as bars to this proceeding.

On July 25, 1938, pursuant to a consent election agreement, the Carpenters was designated as the representative of all production and installation employees of the Company, including working foremen,² and was thereafter recognized by the Company as the representative of these employees. However, no collective bargaining agreement was executed by these parties until 1940, when, in addition to the Carpenters, the Company executed collective bargaining agreements with Metal Workers 108, the Plumbers and the Painters, covering employees claimed by each of these organizations.

On August 6, 1941, the Company executed a closed-shop master agreement with the Council, covering journeymen, registered apprentices, lumber handlers, and mill laborers. This agreement was for a term ending June 30, 1942, and provided for automatic renewal for yearly terms thereafter, "unless either party shall within sixty (60)

² Case No 21-R-588

days prior to any expiration date give to the other written notice of their intention to modify, amend or terminate the agreement." At the same time the Company executed separate subsidiary closed-shop agreements with the Carpenters, the Painters, Metal Workers 108 and 371, and the Plumbers, and, in addition, it reached an understanding with the Teamsters which was not reduced to writing. The original master agreement between the Company and the Council was succeeded by another closed-shop agreement executed on January 26, 1944, retroactive to June 30, 1943, and to continue in operation until June 30, 1944. This agreement contained the identical renewal provision set forth in the 1941 agreement. It was renewed automatically in 1944. Later in 1944, the Company executed supplementary closed-shop agreements with Metal Workers 371 and the Painters (August 18), Metal Workers 108 (September 18), the Carpenters (September 22), and the Teamsters (November 30). No separate agreement was executed by the Company and the Plumbers, these parties being content to conduct their relations pursuant to the 1941 master agreement which they considered as having been automatically renewed with respect to them.

An examination of these contracts discloses that the Company had bound itself contractually to the Council, the Carpenters, the Painters, Metal Workers 108 and 371, and the Plumbers for a period ending June 30, 1945, and with the Teamsters for a period ending July 1, 1945. It further reveals that the contracts between the Company and the Carpenters, the Painters, Metal Workers 108, and the Teamsters were automatically renewable for yearly periods after their stated terms unless any of the parties thereto gave notice "not less than" or "at least" 60 days prior to any expiration period of a desire to modify, terminate or amend. The contract between the Company and Metal Workers 371 had a similar provision, except that it provided for "at least" 90 days' notice.

In 1945, prior to the 60-day period, the Council, the Painters and Metal Workers 108 and 371 gave notice to the Company of a desire to modify their agreements.³ On June 15, 1945, the Company executed new closed-shop agreements with the Painters and with Metal Workers 108 and 371 for the period June 30, 1945, to June 30, 1946, and, on November 9, 1945, it executed a new closed-shop master agreement with the Council, retroactive to June 30, 1945, covering the same period.

In view of the foregoing, we find that no contractual bar exists to a current determination of representatives. It is apparent that the

³ We also infer that the Carpenters, Teamsters, and the Plumbers gave similar notice inasmuch as, at the time of the original hearing in this proceeding, negotiations were being conducted with respect to the terms of new agreements between the Company and these organizations.

Machinists' rival claim to representation on April 26, 1945, was timely insofar as the 1944 agreements between the Company and the Carpenters, the Painters, Metal Workers 108, and the Teamsters are concerned, having been given prior to the 1945 effective date of the automatic renewal clauses in these documents. It is also evident that the 1944 agreements between the Company and the Council, the Plumbers and Metal Workers 371 had been opened up by these parties and that no new agreements had been reached by them at the time the Machinists gave notice in 1945 of its claim to representation. For these reasons we have denied the motion of the Building Trades to dismiss the petition.

A statement of the Trial Examiner, made upon the record at the reopened hearing, indicates that the Machinists represents a substantial number of employes in the unit hereinafter found to be 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 Machinists seeks a unit comprised of all employees of the Company engaged as tool and die makers, precision jig builders, machinists, maintenance mechanics, apprentices and helpers, and welders that work with these classifications, including specifically all welder journeymen, maintenance repair classes A and B, bench machinists classes A and B, jig and tool builders classes A, B and C, general machinists, metal workers C, and foremen C engaged in the maintenance department, machine shop and glass grinding machine manufacturing department, but excluding supervisory employees and all other employees of the Company. The Company and the Building Trades assert, in effect, that in view of the Company's bargaining history in which it has been allegedly dealing with the Building Trades as a representative of its employees upon a plant-wide basis, the unit sought by the Machinists is inappropriate.

In 1938, when the Company was engaged primarily in woodworking operations, the Carpenters, as above noted, was designated as the representative of its "production and installation employees, includ-

⁴ The Trial Examiner reported that the Machinists submitted 19 designations bearing the names of persons employed by the Company on February 22, 1946, and that as of that date, there were 74 employees in the unit sought by the Machinists. In view of the closed-shop provisions in the various agreements between the Company and the Building Trades, we find that this showing of interest, amounting to approximately 25.6 percent, is substantial.

At the original hearing a Field Examiner reported that the Machinists submitted 39 designations and that there were, as of May 15, 1945, 95 employees in the unit sought by the Machinists.

ing working foremen," and was thereafter recognized by the Company as such. This situation lasted until some time in 1940 when the Carpenters ceded jurisdiction over certain employees to other labor organizations, and the Company thereafter executed collective bargaining agreements with the Carpenters, the Painters, the Plumbers and Metal Workers 108, recognizing these organizations as the representatives of its employees engaged in occupations claimed by each. In 1941 a master agreement was made between the Company on the one hand, and the Carpenters, the Painters, Metal Workers 108 and 371, the Teamsters and the Plumbers, acting together as the Council on the other, and supplementary agreements were also executed between the Company and the Carpenters, the Painters, Metal Workers 108 and 371, and the Plumbers.⁵ The 1941 series of agreements continued until replaced by a new master agreement, dated January 26, 1944, between the same parties,⁶ and supplementary agreements made in 1944 between the Company and the Carpenters, Metal Workers 108 and 371, the Painters and the Teamsters.⁷ These agreements were thereafter succeeded by a new master agreement dated November 9, 1945, between the Company and the Building Trades, and by supplementary agreements in 1945 between the Company and the Painters and Metal Workers 108 and 371. The record indicates that the Company is presently engaged in negotiations with the other labor organizations affiliated with the Council for the purpose of reaching new supplementary agreements with each of them.

In its collective bargaining relations pursuant to all these agreements, it is clear from the record that, except as to matters of common interest, the Company has in practice dealt with individual labor organizations rather than with the Council. Grievances, for example, have been handled by the individual unions rather than by the Council, and new employees have been assigned to the particular organization claiming jurisdiction over their work classifications and have looked to that organization rather than to the Council as their representative.

Due to the national emergency, the character of the Company's operations changes, and metals took the place of wood as the principal medium with which the Company's employees worked. Because of this, new classifications of employees were engaged which were assigned to particular labor organizations affiliated with the Council.

In March of 1944, the Machinists began organizing certain of the employees then represented by the Carpenters and Metal Workers

⁵ As noted previously, the Teamsters executed no written supplementary agreement with the Company at this time.

⁶ This agreement differed from the 1941 agreement in that it recited that the labor organizations involved were being represented by the Council. The Council was merely a signatory to the 1941 agreement.

⁷ As indicated before, the Plumbers did not execute a separate supplemental agreement in 1944.

371,⁸ and was successful in obtaining some concessions from the latter organization. Thus, grievances were initiated by the Machinists on behalf of employees in the unit which it seeks, and were carried through the grievance machinery established under the contracts between the Company and the Metal Workers by a steward of the latter organization; dues of employees claimed by the Machinists which were collected by the Company pursuant to "check-off" provisions contained in the Metal Workers' contracts were turned over by the Metal Workers to the Machinists; the closed-shop provisions of these contracts were not enforced against employees who were members of the Machinists prior to their employment with the Company, and, in some instances, were not enforced against employees who joined the Machinists after they had entered the Company's employ; and the Machinists, as well as the labor organizations enjoying contractual relations with the Company, was asked by the Company to help supply it with personnel.

In 1944, some time after its organizational drive had begun, the Machinists requested the Building Trades to cede jurisdiction to it over the employees it now seeks. This request was denied, in effect, when, on July 25, the Council informed the Machinists that no action had been taken upon its request. In December 1944, the instant petition was filed.

Thereafter, in late January and early February, the Council awarded jurisdiction over all employees sought by the Machinists to the Carpenters, with the exception of welders and certain jig and tool builders who were assigned to Metal Workers 108.⁹ Thereafter, the Council notified the Company of these actions, and called upon it to enforce the closed-shop provisions contained in the contracts between it and the Building Trades. Subsequently, the Company posted notices in the plant to the effect that its employees were required to become members of one of the organizations affiliated with the Council as a condition of continued employment. However, there is no evidence that any employees have been discharged for failure to comply with this posting.

We are of the opinion that the classifications of employees sought herein by the Machinists comprise a distinct, functionally coherent group. We are further of the opinion that, in view of the events set forth above, the Company's history of collective bargaining with the Building Trades is not so clear as to warrant a finding that it was premised solely upon a plant-wide unit. Finally, through the Machinists, and by their own actions, the employees sought by the Machinists have, to a considerable extent, resisted assimilation into any of the

⁸ At this time the majority of the employees sought herein by the Machinists were represented by Metal Workers 371.

⁹ Previously, the majority of these employees had been represented by Metal Workers 371.

groups over which the Council's affiliates have claimed jurisdiction.¹⁰ We conclude, therefore, that under the circumstances present herein the unit sought by the Machinists is appropriate.

We find that all tool and die makers, precision jig builders, machinists, maintenance mechanics, apprentices and helpers, and all welders who work with these classifications, employed at the Company's Los Angeles, California, plant, including specifically all welder journeymen, maintenance repair classes A and B, bench machinists classes A and B, jig and tool builders classes A, B, and C, general machinists, metal workers C, and foremen C¹¹ engaged in the maintenance department, machine shop, and glass grinding machine manufacturing department, 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, and all other employees of the Company, 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 an election by secret ballot among employees in the appropriate unit 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.

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 Weber Showcase & Fixture Co., Inc., 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 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 employees in the unit found appropriate in Section IV, above, who were em-

¹⁰ A representative of the Carpenters admitted at the hearing that several of the employees sought by the Machinists resisted representation by the labor organizations having contracts with the Company

¹¹ It does not appear that these employees are supervisory within the meaning of our customary definition.

ployed 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 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, to determine whether they desire to be represented by International Association of Machinists, for itself and on behalf of Lodge 311, or by Los Angeles Building and Construction Trades Council, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

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