

In the Matter of ANBACO CORPORATION, d/B/A A. B. C. WELDING & MANUFACTURING COMPANY and INDEPENDENT UNION OF THE A. B. C. WELDING & MANUFACTURING COMPANY

Case No. 3-R-1185.—Decided June 20, 1946

Mr. Councey M. Bacon, of Niagara Falls, N. Y., for the Company
Messrs. Bernard Levy and Robert Vaughn, of Niagara Falls, N. Y.,
for the Independent.

Mr. Neil J. Cunningham, of Buffalo, N. Y., for the Boilermakers
Union.

Mr. Bernard Dunau, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a first amended petition duly filed by Independent Union of the A. B. C. Welding & Manufacturing Company, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of Anbaco Corporation, d/b/a A. B. C. Welding & Manufacturing Company, Niagara Falls, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cyril W. O'Gorman, Trial Examiner. The hearing was held at Buffalo, New York, on May 1, 1946. The Company, the Independent, and the National Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local No. 7, AFL, herein called the Boilermakers Union, appeared and participated. At the hearing a motion by the Boilermakers Union to intervene was granted. 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 errors 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

Anbaco Corporation, d/b/a A. B. C. Welding & Manufacturing Company is a New York corporation operating what is generally known as a job contracting welding shop at its plant in Niagara Falls, New York. From blueprints provided by its customers, it fabricates storage bins, heat exchangers, material handling equipment, and various other units. The Company is also a licensee authorized to fabricate chemical processing equipment and control equipment. During the year preceding the hearing, the Company purchased raw and processed materials, consisting mainly of steel and ferrous alloys, valued in excess of \$20,000, over 75 percent of which, in their raw state, originated outside the State of New York. During the same period of time, the Company shipped about 7½ percent of its finished products from its plant to points outside the State.

The Company admits, for the purposes of this proceeding only, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Independent Union of the A. B. C. Welding & Manufacturing Company is a labor organization, admitting to membership employees of the Company.

The National Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local # 7, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On March 19, 1946, at a conference of the parties, the Boilermakers Union objected to a consent election, to which the Company and the Independent were agreeable, to determine the exclusive bargaining representative of the Company's employees.

The Boilermakers Union contends that a collective agreement between the Company and the International Association of Bridge, Structural and Ornamental Iron Workers, Local # 9, is a bar to the present proceeding. For reasons set forth in Section IV, this contention is untenable.

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 work of the Company is divided into two categories, that which is performed wholly within the plant, and that which is performed outside the plant on the customer's premises. The outside work consists in the installation of units and the rearrangement of units in the customer's plant. Pursuant to a collective agreement with the International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 9, hereinafter referred to as the International, the Company exclusively employs members of the International in the performance of its outside work. When International members are not available the Company is authorized to use its plant employees provided such employees obtain International work permits. The Independent contends that all production and maintenance employees employed within the plant, whether or not they are also engaged in outside work, constitute an appropriate unit. The Boilermakers Union agrees that such a unit is appropriate, but contends alternatively that the existing collective agreement with the International is a bar to the present proceeding. The Company assumes no position, choosing to rely on the Board's discretion to determine the appropriate unit.

In the summer of 1943, a dispute arose between the Labor Council of Niagara Falls, a joint council of building trade unions of Niagara Falls, and the Company concerning the status of the Company's employees engaged in work outside its plant. The source of the dispute was the concurrent presence on the job of the Company's employees and members of constituent unions of the Labor Council. In settlement of the disagreement the Labor Council orally notified the Company that it could continue to perform outside work if it would enter a collective agreement with the International. In July 1943, a written, integrated contract was entered into by the Company and the International. The contract in terms was between the International and the Builder's Association of Niagara Falls, New York, and vicinity. The Company was not a member of the latter organization, but was a signatory to the contract. In the administration of the agreement, concurred in by the International and the Company, the Company employed exclusively members of the International for its outside work, except when, due to shortage of labor, the International was unable to supply the required men. In that event, the Company used its plant employees for its outside work who for the limited purpose of the particular job were granted International work permits, and thereupon their conditions of employ-

ment were wholly governed by the collective agreement. The plant employees engaged in outside work with members of the International sometimes instructed the latter concerning the details of the job, but such supervision did not involve any authority to hire, discharge, discipline, or effectively recommend such action. At no time did the International or the Company regard their collective agreement as governing the activities of the Company's employees working within the plant. The contract is automatically renewable annually, and continued in full force and effect on the date of the hearing.

The contract between the International and the Company does not cover the activities of the employees within the plant, and is, accordingly, not a bar to the present proceeding. It is evident that the sole remaining question is the propriety of including within the unit such of the Company's plant employees who are also engaged in work away from the plant. The occasional utilization of the Company's plant employees in outside work does not diminish their concern with the conditions of employment within the plant. Nor is the variability of their situs of employment such a divergent factor as to make their presence in the same unit with employees employed wholly within the plant incompatible. The history of collective bargaining between the International and the Company demonstrates the feasibility of dividing the subject matter of collective bargaining into that which concerns conditions of employment within the plant and that which concerns conditions of employment away from the plant. A unit composed of all production and maintenance employees, including those engaged in outside work, is appropriate for the purpose of collective bargaining concerning the conditions of employment within the plant.¹

We find that all production and maintenance employees of the Company, but excluding office and clerical employees and all 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 an election by secret ballot among employees in the appropriate unit who were employed during the pay-roll period immediately preceding the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

¹ See *Matter of Wadham's Division of Socony-Vacuum Oil Company*, 54 N. L. R. B. 1164; *Matter of Carlisle & Jacquelin*, 55 N. L. R. B. 678; *Matter of Consolidated Steel Corporation, Ltd.*, 57 N. L. R. B. 921; *Matter of Underwood Machinery Company*, 59 N. L. R. B. 42.

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 Anbaco Corporation, d/b/a A. B. C. Welding & Manufacturing Company, Niagara Falls, New York, 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 Third 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 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 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 Boilermakers, Iron Shipbuilders and Helpers of America, Local #7, affiliated with the American Federation of Labor, or by Independent Union of the A. B. C. Welding & Manufacturing Company, 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.