

In the Matter of AIR REDUCTION SALES COMPANY, EMPLOYER *and*
INTERNATIONAL ASSOCIATION OF MACHINISTS, FOR ITSELF AND ON
BEHALF OF DISTRICT LODGE No. 94, PETITIONER

In the Matter of AIR REDUCTION SALES COMPANY, EMPLOYER *and*
INTERNATIONAL CHEMICAL WORKERS UNION, No. 11, A. F. L.,
PETITIONER

*Cases Nos. 21-R-4025 and 21-R-4029, respectively.—Decided
February 11, 1948*

*Messrs. H. A. Hoth and Merrill H. Turner, of Los Angeles, Calif., for
the Employer.*

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

Mr. Drew Taylor, of Los Angeles, Calif., for the Chemical Workers.

*Mr. William G. Scherer, of Los Angeles, Calif., for the Operating
Engineers.*

DECISION

DIRECTION OF ELECTIONS

AND

ORDER

Upon separate petitions duly filed, hearing in these cases, as consolidated, was held at Los Angeles, California, on July 29, 1947, before Charles M. Ryan, hearing officer.

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-man panel consisting of the undersigned Board Members.*

At the hearing, the Machinists requested leave to withdraw its petition on the ground that the testimony revealed that its request for a single plant unit was not appropriate. The request is hereby granted. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

*Chairman Herzog and Members Murdock and Gray

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Air Reduction Sales Company, a Delaware corporation, is engaged in the manufacture and sale of oxygen and acetylene gases, welding and cutting apparatus, and supplies, at four plants within the City of Los Angeles, California. During the period from January 1, 1947, to July 1, 1947, the Employer purchased for use at these plants materials valued at over \$125,000, of which about 67 percent represented purchases from sources located outside the State of California. During the same period, the Employer sold products valued at over \$500,000, of which about 4 percent represented sales to customers located outside the State.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, District Lodge No. 94, herein called the Machinists, is a labor organization which claimed to represent employees of the Employer.

International Chemical Workers Union, No. 11, herein called the Chemical Workers, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

International Union of Operating Engineers, and Local 63 and its subdivisions, herein called the Operating Engineers, are labor organizations affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Operating Engineers contends that four separate identical collective bargaining contracts executed by it and the Employer on July 14, 1946, bar any current determination of representatives. Each of these contracts, covering one of the four Los Angeles plants involved herein, provides, *inter alia*, that:

This agreement becomes effective July 14, 1946, and will continue in effect until July 14, 1947, and year to year thereafter, unless written notice of desire to change or modify the Agreement is served by either party to the other thirty (30) days prior to the expiration date of this Agreement.

On May 5, 1947, the Operating Engineers, by letter, served notice on the Employer of its desire "to reopen our existing contract for the

purpose of changing or modifying wages, hours, and working conditions of the foregoing, as provided under terms of our present agreement." Before the Employer replied, it had received, on May 29, 1947, and on June 12, 1947, demands for recognition from the Machinists and Chemical Workers, respectively. Thereafter, on June 6, 1947, and June 18, 1947, the respective labor organizations filed the petitions herein. The Employer now refuses to recognize any labor organization as the exclusive bargaining representative of employees of the Employer until that labor organization has been certified by the Board in an appropriate unit.

At the hearing, the Operating Engineers contended that, under the terms of each contract, only the wage addenda expired on July 14, 1947, and that the remainder of the contract continued from year to year. In our opinion, the language of the contracts does not support this interpretation. According to the plain meaning of each contract, the May 5, 1947, letter from the Operating Engineers to the Employer terminated the contracts on July 14, 1947. Therefore, the 1946 contracts are not a bar to a present determination of representatives.

In its brief, the Operating Engineers, a coaffiliate of the Chemical Workers in the American Federation of Labor, contends that, as it has jurisdiction over the employees involved herein, the petition of the Chemical Workers should be dismissed. The Board is customarily reluctant to entertain representation petitions in the presence of a dispute between sister organizations, as there is a likelihood that all contentions might be eliminated by submission to the authority of the parent body. However, in this case there is little prospect that the controversy can be effectively resolved without resort to the administrative processes of the Act. Under the circumstances, we shall proceed with the investigation.¹

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.

IV. THE APPROPRIATE UNIT

We find, substantially in accordance with the agreement of the parties at the hearing, that all production and maintenance employees of the Employer at the following Los Angeles, California, plants: 2423 East 58th Street, 2074 Laura Avenue, 5600 Bickett Street, and 5541 Randolph Street, excluding truck drivers, machine shop employees, clerical employees, and all guards, professional employees, and supervisors as defined in the amended Act, constitute a unit appropriate for

¹ *Matter of Grinnell Company of the Pacific*, 71 N. L. R. B. 1370, and cases cited therein.

the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION²

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Air Reduction Sales Company, Los Angeles, California, 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, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, 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, 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 Chemical Workers Union, No. 11, A. F. L., or by International Union of Operating Engineers, and Local Union 63 and its subdivisions, A. F. L., for the purposes of collective bargaining, or by neither.

ORDER

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of Air Reduction Sales Company, Los Angeles, California, filed by International Association of Machinists, for itself, and on behalf of District Lodge No. 94, be, and it hereby is, dismissed.

² Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director have its name removed from the ballot.