

In the Matter of BROWN AND ROOT, INC., WUNDERLICH CONTRACTING COMPANY, PETER KLEWIT SONS COMPANY, WINSTON BROS. COMPANY, DAVID G. GORDON, CONDON CUNNINGHAM CO., MORRISON-KNUDSON COMPANY, INC., J. C. MAGUIRE & COMPANY, AND CHARLES H. TOMPKINS CO., DOING BUSINESS AS A JOINT VENTURE UNDER THE NAME OF OZARK DAM CONSTRUCTORS,¹ EMPLOYER and LITTLE ROCK, FORT SMITH & SPRINGFIELD JOINT COUNCIL, A. F. L., PETITIONER

Case No. 32-RC-33.—Decided June 11, 1948

Mr. William Alexander, of New Orleans, La., for the Board.

Messrs. A. J. Wirtz and Ben H. Powell, both of Austin, Tex., for the Employer.

Messrs. T. J. Gentry and Frank H. Cow, both of Little Rock, Ark., for the Petitioner.

Mr. L. M. Fagan, of Fort Worth, Tex., for the Intervenor.

DECISION
AND
DIRECTION OF ELECTIONS

Upon a petition duly filed, hearing in this case was held at Little Rock, Arkansas, on April 9, 1948, before Richard C. Keenan, hearing officer. 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 Board² makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Ozark Dam Constructors of Houston, Texas, is a joint venture organized to build Bull Shoals Dam and works appurtenant thereto on the White River Watershed in Marion and Baxter Counties,

¹ The name of the Employer appears as amended at the hearing.

² 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 [Houston, Murdock, and Gray].

Arkansas. The participants in this venture are Brown and Root, Inc., of Houston, Texas; Wunderlich Contracting Company of Jefferson City, Missouri; Peter Kiewit Sons Company of Omaha, Nebraska; Winston Bros. Company of Minneapolis, Minnesota; David G. Gordon of Denver, Colorado; Condon-Cunningham Co. of Omaha, Nebraska; Morrison-Knudson Company, Inc., of Boise, Idaho; J. C. Maguire & Company of Los Angeles, California; and Charles H. Tompkins Company of Washington, District of Columbia. The total contract price of this project is \$22,146,444. The total cost of the dam, including materials furnished by the United States Government, will be \$37,000,000.

At the time of the hearing, Ozark Dam Constructors, hereinafter called the Employer, had purchased materials and services in the amount of \$3,247,471.21, of which \$1,966,912.17 had been purchased outside the State of Arkansas. It had placed further orders having a total value of \$3,242,514.07, of which orders valued at \$3,154,904.81 were placed outside the State of Arkansas. The Employer was not prepared to estimate the total value of materials which will go into the dam, but the United States Engineers estimate the total to be \$19,410,640, of which \$9,929,603 will come from outside the State of Arkansas. The Government will furnish materials worth \$16,348,700, of which materials with an estimated value of \$6,901,700 will come from without the State of Arkansas.

The dam is part of a flood control and electrical power development project of the War Department. The cost of the entire project is estimated at over \$69,000,000. Under existing law³ the Secretary of War must deliver all electricity not required to operate the project to the Secretary of the Interior, who is required to transmit and dispose of the same in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. At the time of the hearing no contracts had as yet been let to dispose of this power.

Despite the great value and amount of interstate shipments necessitated by the construction of the dam, the Employer claims that it is not engaged in interstate commerce within the meaning of the National Labor Relations Act, basing its contention on the fact that the Board has in the past refused to exercise jurisdiction in construction cases. Aside from the fact that construction of a dam for purposes of flood control and generation of electrical power has a greater impact upon commerce than construction of buildings, we have re-

³ 58 Stat 887, 890

peatedly stated that our jurisdiction extends over construction projects if their interruption would affect interstate commerce, and that our abstention from exercising our jurisdiction in construction cases was a matter of administrative choice and not of legal necessity.⁴ The law gives us jurisdiction in all situations where stoppage of production due to a labor dispute would affect interstate commerce. It has been held immaterial whether that stoppage occurs at the beginning or the end of the interstate shipment of goods in commerce.⁵ Inasmuch as stoppage of work on the Bull Shoals Dam would affect shipments of several million dollars' worth of materials into the State of Arkansas from other States, and would delay the production of electricity which will probably be sold in interstate commerce,⁶ we find, contrary to the contentions of the Employer, that it is engaged in commerce within the meaning of the National Labor Relations Act, and that the purposes of the Act will best be served if we assume jurisdiction in this case.⁷ The Employer's motion to dismiss the petition on jurisdictional grounds, made at the hearing and referred by the hearing officer to the Board, is therefore denied.⁸

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization composed of the various building trades unions in Little Rock and Fort Smith, Arkansas, and Springfield, Missouri, affiliated with the Building Trades Department of the American Federation of Labor, claiming to represent employees of the Employer. Inasmuch as the Petitioner exists for the purpose of collective bargaining and apparently has been designated to that effect, by the employees, we find no merit in the contention of the Employer

⁴ *Matter of Johns-Manville Corporation*, 61 N L R B 1.

⁵ *Newport News Shipbuilding and Drydock Co v N L R B*, 101 F (2d) 841 (C C A. 4, 1939), *Matter of Liddon White Truck Company*, 76 N L R B 1181, and cases cited therein.

⁶ Bull Shoals Dam will be located very close to the Missouri-Arkansas border. It is therefore unlikely that the sale of electrical power produced at the Bull Shoals project will be limited to the State of Arkansas. The Employer's objection to testimony by an engineer employed by the United States Corps of Engineers was referred by the hearing officer to the Board. The objection is hereby overruled. We have considered such testimony, but it is, of course, not determinative of the jurisdictional issue.

⁷ *Matter of Starrett Brothers and Eken, Inc*, 77 N L R B. 275.

⁸ The Employer also moved to dismiss the petition on the ground that it did not state that the Employer declined to recognize the Petitioner as a bargaining representative. The Employer has declined to do so. We find the failure of the Petitioner so to state immaterial, and accordingly deny the motion to dismiss.

The Employer also contended that the Petitioner's constitution prevented it from operating as a bargaining representative without violating the Act. We find no merit in this contention. We will not inquire into a union's constitution in the absence of proof that such union will not accord effective representation. *Matter of The Baldwin Locomotive Works*, 76 N L R B 922.

that the Petitioner is not a labor organization within the meaning of the Act.⁹

International Association of Machinists, herein called the Intervenor, is a labor organization claiming to represent employees of the Employer.¹⁰

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner or the Intervenor as the exclusive bargaining agent of the employees in the unit claimed by each to be appropriate until certified by the Board.

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

The Petitioner desires a unit composed of all employees of the Employer excluding office and clerical employees, guards, professional employees, supervisors, and machinists. The Intervenor desires to represent the machinists in a craft unit, in which it would include millwrights and welders, who are also sought by the Petitioner. The Intervenor also wishes to represent, in a separate unit, all mechanics, auto mechanics, truck mechanics, heavy duty equipment mechanics, and mechanic welders now classified on the Employer's pay roll as mechanic repairmen and helpers. With the afore-mentioned exceptions, the Intervenor agrees to the unit sought by the Petitioner. The Employer takes no position on the question of the appropriate units.

The employees sought by the Petitioner comprise the various craft groups customarily associated with the building trades, plus the unskilled laborers employed at the project. As far as can be ascertained from the record, the employees in each job classification work under separate supervision and have separate rates of pay. There was no evidence of transfer from one group to another, and, while the various groups work alongside each other, each seems to be confined to its own job along craft lines. The unit sought by the Petitioner thus is not the usual highly integrated production and maintenance unit, but a collection of skilled trades which, for the purpose of avoiding jurisdictional disputes, have been joined together by the Petitioner.

⁹ *Matter of Cleveland Cliffs Iron Co*, 63 N L R B 674

¹⁰ The Employer's opposition to the motion to intervene and its motion to dismiss the petition on the ground that neither the Intervenor nor the Petitioner had affirmatively shown then compliance with Section 9 (f), (g), and (h) of the Act is without merit, as the question of compliance with that section is a matter of administrative determination not litigable by the parties. *Matter of Lion Oil Company*, 76 N L R B 565

The machinists sought by the Intervenor work under separate supervision in a separate room on metal machinery with such tools of the trade as lathes, drillers, and shapers. While no apprentice training program was in effect at the time of the hearing, the Employer contemplated the hiring of apprentices in the future. All the parties agree that the machinists working in the machine room constitute an appropriate craft unit. The Intervenor, however, wishes to include millwrights and welders in this unit. At the time of the hearing, the Employer had not yet engaged any millwrights. It planned to do so, and, by the time of the election ordered herein, will probably have about 10 millwrights in its employ. They will not work in the same room or under the same supervision as the machinists, but will set up metal machinery on wooden frames under their own foreman. They will receive the same pay as the machinists and work with some of the same machinery. The Petitioner seeks to represent them by virtue of the fact that their work is closely allied with that of the carpenters, who are included in the unit sought by the Petitioner. In view of the inconclusive state of the evidence, and the fact that apparently both the unit sought by the Petitioner and that sought by the Intervenor may appropriately include millwrights, we shall let the millwrights themselves decide, in the election hereinafter directed, whether they wish to be represented by the Intervenor or the Petitioner. Pending the outcome of this election we shall make no unit determination concerning the millwrights.

The welders do all the welding jobs on the project. They have their own supervisors and work wherever welding jobs are needed, alongside employees belonging to any of the other classifications. Their rate of pay is the same as that of the classification of employees with whom they are working at the moment. They are not permanently attached to any one group. There is no evidence as to the respective amount of time spent with each group. From what facts are available, we conclude that their interests seem to be more closely tied up with the employees sought by the Petitioner, and we shall accordingly include them in the first voting group hereinafter established.

The mechanic repairmen, whom the intervenor wishes to represent in a separate unit, repair any broken machinery on the job. They are skilled employees with special training. They work under separate supervision, and are the only employees of the Employer who are paid on a sliding scale. In view of these facts, the mechanic repairmen may, if they so desire, constitute a separate bargaining unit. Accordingly, we shall make no unit determination as to these employees pending the outcome of the elections hereinafter directed. If

the mechanics select the Intervenor, they will be taken to have indicated their desire to constitute a separate bargaining unit.

We shall direct separate elections by secret ballot among the employees at the Employer's Bull Shoals Dam construction project who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction, in each of the voting groups described below.

Group 1. All employees at the Employer's Bull Shoals Dam construction project, including welders but excluding machinists,¹¹ millwrights, mechanic repairmen and their helpers,¹² office and clerical employees, guards, professional employees, and supervisors as defined by the Act.

Group 2. All machinists, being those employees of the Employer who operate lathes, shapers, billing machines, drill presses, planers, boring machines, and any other machines used in the manufacture of metal products within a shop, excluding supervisors as defined by the Act.

Group 3. All millwrights excluding supervisors as defined by the Act.

Group 4. All mechanics, auto mechanics, truck mechanics, and heavy duty equipment mechanics¹³ now classified on the Employer's pay-roll as mechanic repairmen, and their helpers, excluding supervisors as defined by the Act.

As indicated above, there will be no final determination of the appropriate unit or units pending the results of the elections.

V. THE DETERMINATION OF REPRESENTATIVES

Due to the nature of the Employer's operations, the number of employees varies considerably. At the time of the elections ordered herein, employment will be near its seasonal peak. The Employer's policy is to retain on the pay-roll those employees for whom there is no work for a few days due to weather conditions or material shortages, and to lay off those whose period of unemployment is expected to last longer. The Employer, however, keeps the addresses and telephone numbers of the employees in this latter group, and offers them reemployment when it is able to do so. In view of these facts, we find

¹¹ The definition of machinists is fully set forth in the description of Voting Group 2

¹² The definition of mechanic repairmen and their helpers is fully set forth in the description of Voting Group 4

¹³ The Intervenor wishes to include mechanic welders in this group. As the Employer does not at present employ mechanic welders, however, and does not plan to do so, we shall not include them in the voting group.

that all employees of the Employer who were laid off and whose addresses and/or telephone numbers were retained by the Employer have a reasonable expectation of reemployment and are entitled to vote unless they have obtained permanent employment elsewhere or have failed to respond to an offer of reemployment by the Employer.¹⁴

DIRECTION OF ELECTIONS¹⁵

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Ozark Dam Constructors, Houston, Texas, 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 Fifteenth 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 voting groups described in Section IV, above, who are 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, and also excluding employees on strike who are not entitled to reinstatement to determine: (1) whether or not the employees in Voting Group 1 desire to be represented by Little Rock, Fort Smith, and Springfield Joint Council, A. F. L., for the purposes of collective bargaining; (2) whether or not the employees in Voting Group 2 desire to be represented by International Association of Machinists for the purposes of collective bargaining; (3) whether the employees in Voting Group 3 desire to be represented by Little Rock, Fort Smith, or Springfield Joint Council, A. F. L., or by the International Association of Machinists, for the purposes of collective bargaining, or by neither; and (4) whether the employees in Voting Group 4 desire to be represented by Little Rock, Fort Smith, and Springfield Joint Council, A. F. L., or by International Association of Machinists, for purposes of collective bargaining, or by neither.

¹⁴ *Matter of Glenn L. Martin Company*, 74 N. L. R. B. 546; *Matter of Scintilla Magneto Division, Bendix Aviation Corporation*, 61 N. L. R. B. 520.

¹⁵ Any participant in the elections herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.