

In the Matter of BERGLUND TRACTOR AND EQUIPMENT COMPANY *and*
OPERATING ENGINEERS LOCAL UNION No. 3, OF THE INTERNATIONAL
UNION OF OPERATING ENGINEERS, A. F. OF L.

In the Matter of BERGLUND TRACTOR AND EQUIPMENT COMPANY
and INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 1419,
A. F. OF L.

*Cases Nos. 20-R-1354 and 20-R-1386, respectively.—Decided Decem-
ber 29, 1945*

*Brobeck, Phleger & Harrison, by Mr. Gregory A. Harrison, of San
Francisco, Calif., for the Company.*

Mr. K. C. Apperson, of Oakland, Calif., for the Machinists.

*Mr. C. F. Mathews, of San Francisco, Calif., for the Operating
Engineers.*

Mr. John A. Nevros, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Operating Engineers Local Union No. 3, of the International Union of Operating Engineers, A. F. of L., herein called the Operating Engineers, and International Association of Machinists, Local 1419, A. F. of L.,¹ herein called the Machinists, each alleging that a question affecting commerce had arisen concerning the representation of employees of Berglund Tractor and Equipment Company, Napa, California, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Robert E. Tillman, Trial Examiner. The hearing was held at San Francisco, California, on August 6, 1945. The Company, the Operating Engineers, and the Machinists, 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 Trial Examiner's rulings made at the hearing are free from

¹ The names of the petitioning unions appear as amended at the hearing.

prejudicial error 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

Berglund Tractor and Equipment Company, a California corporation, having its principal office and place of business at Napa, California, and additional places of business at Santa Rosa, Rio Vista, Dixon, and Willits, California, is engaged in the sale, rental, and repair of new and used tractors and farm equipment. During the year 1944 the Company purchased machinery, materials, and supplies valued in excess of \$500,000, of which approximately 25 percent represented shipments to the Company from sources outside the State of California. During the same period the Company sold both new and used equipment and parts, valued in excess of \$1,137,000, of which more than 35 percent represented shipments to points 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

Operating Engineers Local Union No. 3, of the International Union of Operating Engineers, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Association of Machinists, Local 1419, is a labor organization, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Operating Engineers and the Machinists as the exclusive bargaining representatives of certain of its employees at the Santa Rosa and Napa shops, respectively.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Operating Engineers and the Machinists each represents a substantial number of employees in the units hereinafter found appropriate in Cases Nos. 20-R-1354 and 20-R-1386, respectively.²

² The Field Examiner reported that in Case No. 20-R-1354 the Operating Engineers submitted authorization cards bearing the names of 7 of the 11 employees in the alleged appropriate unit at the Company's Santa Rosa shop, and that the cards were dated March 23, 1945. He also reported that in Case No. 20-R-1386 the Machinists submitted a petition

We find that questions affecting commerce have 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 UNITS

The Machinists petitions for a unit of all machinists, heavy duty mechanics, welders, apprentices, helpers, and utility men in the Company's Napa shop, excluding parts men and supervisory employees. The Operating Engineers seeks a virtually identical unit comprising all heavy duty repair men,³ helpers and welders, at the Company's Santa Rosa shop, but excluding parts men and supervisory employees. Neither the Operating Engineers nor the Machinists asserts any interest in the unit claimed by the other. The Company objects to any separation of the Napa and Santa Rosa employees from its other employees for purposes of collective bargaining and contends that the only appropriate unit is one composed of the employees of all its five shops, including the parts men.

As already indicated, the Company operates five shops in the State of California, one in each of the following towns: Napa, Santa Rosa, Rio Vista, Dixon, and Willits. Each shop does service and repair work, and serves the surrounding area. The service and repair work is done either in the shop proper or on the customer's premises, as the job requires. The shops are widely separated, with Santa Rosa, Rio Vista, Dixon, and Willits being 34, 42, 44, and 99 miles distant, respectively, by the shortest routes from the main shop in Napa. The shortest approximate road distances from the Rio Vista shop to the others are: 34 miles to Dixon, 76 miles to Santa Rosa and 100 miles to Willits; and it is about 84 miles from Dixon to Santa Rosa and 149 miles from Dixon to Willits. At its five shops the Company employs approximately 34 mechanics, machinists, welders and their helpers,⁴ and 11 parts men, distributed as follows: 14 machinists and 4 parts men at Napa, 9 machinists and 5 parts men at Santa Rosa, 5 machinists and 2 parts men at Rio Vista, and 3 machinists each at Dixon and Willits, respectively.

There is support in the record for the Company's position that a multiple-plant unit is appropriate. Thus, managerial control over all

bearing the names of 9 of the 11 employees in the alleged appropriate unit at the Company's Napa Shop.

At the hearing there was testimony that there were, in fact, 9 employees in the alleged appropriate unit at the Santa Rosa Shop and 14 in the appropriate unit sought at the Napa Shop.

³ While the Operating Engineers adverts in its petition to "heavy duty repairmen," the record indicates that the Company has no such classification of employees, but that the employees so identified at Santa Rosa are machinists who perform similar work to the machinists at the Napa shop.

⁴ Hereinafter collectively referred to as machinists.

the shops is centralized in the Napa office at which the Company maintains all records including its pay rolls, handles all its purchasing, and approves all its sales and orders. The Company's general manager in the Napa office has authority over all five shops, and the sales manager, assistant manager in charge of the parts department, and the service manager likewise have authority over their respective departments in all five of the Company's shops. The general manager in Napa determines the hiring, retention, transfer, or discharge of employees at all five shops. The hours, wage scales, working conditions, qualifications, and duties of the Company's machinists are the same throughout all five shops.

On the other hand, there are many factors in the record which support the position of the petitioners for separate units of the Company's employees in the Napa and Santa Rosa shops. Thus, the Company has had no history of collective bargaining, either on a multiple-plant, or any other unit basis. Each shop has its own separate immediate supervision. The distances separating the shops constitute substantial barriers to general contact between employees of the several shops as respects union activities,⁵ and such contact cannot be maintained through employee interchange. In this connection, the record indicates that during the year preceding the hearing there were only two employee transfers on a temporary basis from the main shop at Napa to the Willits shop and none to any of the other three shops; that two employees transferred from Santa Rosa to Napa and one to Willits; that one employee from Willits and one from Dixon transferred to the Rio Vista shop; and that there were apparently no transfers between Willits and Dixon, Santa Rosa and Dixon, or Santa Rosa and Rio Vista. The record also reveals that the Machinists has jurisdiction over the Napa shop only, and, accordingly, has not attempted to organize any of the other shops. While the Operating Engineers has jurisdiction over all five shops and has attempted to organize the four shops of the Company not claimed by it, it has apparently been unsuccessful at these shops and makes no claims of membership in any shop except Santa Rosa. Nor is any other labor organization presently attempting to organize the five shops in a single unit. From the foregoing facts, we are of the opinion that the employees of the Napa and Santa Rosa shops should not be deprived at this time of their rights to bargain collectively under the Act, and we find that the employees at each plant may comprise a unit appropriate for collective bargaining purposes.

There remains for consideration the question whether parts men should be included in, or excluded from, the appropriate units. The

⁵ See *Matter of Mine Safety Appliances Co., Callery Plant, Callery, Pa.*, 55 N. L. R. B. 1190.

Company's machinists, who are under the immediate supervision of the shop foreman, do all the repair and service work. (The parts men work in a room apart from the machinists at each shop. These employees are under separate immediate supervision from that of the machinists, and devote their time to locating, laying out, and issuing parts to the machinists. Although a machinist is also qualified to hunt parts, a parts man is not necessarily qualified to perform the work of a machinist. Both groups of employees are paid hourly, work the same hours, and have the same holidays. However, the parts men receive a maximum of 85 cents an hour and 2 weeks' vacation with pay annually, while the machinists receive a maximum of \$1.10 per hour, and 1 week's vacation with pay. The Machinists does not admit parts men to membership while the Operating Engineers admits them but does not solicit their membership. Because the machinists in the units sought by the Unions are highly skilled employees who perform specialized functions whereas the parts men have none of the skills of these employees and are engaged in entirely different work, we are of the opinion that the interests of parts men are dissimilar to those of the other employees. Under all the circumstances, we shall exclude parts men from the units.⁶

We find that (1) all machinists and mechanics at the Company's Napa Shop, including welders, apprentices, helpers, and utility men but excluding parts men, and all or any 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; and (2) all machinists and mechanics at the Company's Santa Rosa Shop, including welders, apprentices, helpers and utility men, but excluding parts men and all or any 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.⁷

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-

⁶ See *Matter of Argus Manufacturing Company*, 63 N. L. R. B. 1159; *Matter of Butler Motors, Inc.*, 28 N. L. R. B. 1254.

⁷ See *Matter of West Kentucky Coal Co.*, 54 N. L. R. B. 358; *Matter of Howard Aircraft Corporation*, 51 N. L. R. B. 386; *Matter of Brown Paper Goods Co.*, 34 N. L. R. B. 743.

roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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 Berglund Tractor and Equipment Company, Napa, California, elections by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth 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 the employees in the units 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 elections, to determine (1) whether or not the employees at the Napa shop desire to be represented by International Association of Machinists, Local 1419, for the purposes of collective bargaining, and (2) whether or not the employees at the Santa Rosa shop desire to be represented by Operating Engineers Local Union No. 3, of the International Union of Operating Engineers, A. F. of L., for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Elections.