In the Matter of YUBA MANUFACTURING COMPANY, EMPLOYER *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, LOCALS 39 AND 681, AFL, PETITIONER

Case No. 20–R–1865.—Decided June 16, 1947

Messrs. George H. Westerberg and *E. Dean Elshire*, of Benicia, Calif., for the Employer.

Mr. Joseph Nobriga, of Oakland, Calif., for the Petitioner.

Mr. A. C. McGraw, of Oakland, Calif., and *Mr. O. E. McNally*, of San Rafael, Calif., for the Intervenor.

Mr. Emil C. Farkas, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Vallejo, California, on February 13, 1947, before Robert E. Tillman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing the Intervenor moved to dismiss the petition on the grounds that (a) its contract with the Employer operates as a bar to a present election; (b) the Petitioner's showing of interest is inadequate; and (c) the unit sought is inappropriate. The hearing officer referred this motion to the Board. For reasons hereinafter stated the motion is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Yuba Manufacturing Company, a California corporation, is engaged in the manufacture and sale of placer dredges, mining machinery and carry alls at its plant at Benicia, California. During the year 1946, the Employer purchased for use at its plant raw materials valued at approximately $1,200,000, of which more than 20 percent originated from points outside the State of California. During the

same period, the Employer manufactured finished products valued in excess of $1,400,000, approximately 50 percent of which was sold and shipped to customers 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

The Petitioner is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

International Association of Machinists, District 95 and Local Lodge 1687, herein called the Intervenor, is a labor organization, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

On August 12, 1946, the Petitioner requested recognition as the exclusive bargaining representative of certain employees of the Employer. The Employer declined recognition on the ground that it was under contractual relationship with the Intervenor, whereupon the Petitioner filed its petition herein on August 19, 1946.

The Employer and the Intervenor have been in contractual relationship since 1943. The most recent contract between these parties was executed on March 1, 1946, and covered substantially all production and maintenance employees including the employees sought herein. It provided for an initial period ending June 1, 1947, and for its automatic renewal for annual periods thereafter in the absence of written notice to change given by either party to the other at least 30 days prior to the expiration date of the contract.

As indicated above, the Intervenor urged as grounds for dismissal that the petition was not timely filed and that the March 1, 1946, contract is a bar. We find no merit in these grounds. Although the contract is effective as a bar during its initial period, that period has expired; and the contract is clearly no bar to a petition which antedated its operative automatic renewal notice date.[1]

The Intervenor also moved to dismiss the petition on the ground that the Petitioner's showing of representation is not adequate. We find no merit in this contention. The Board has frequently held that the matter of showing of representation is purely an administrative matter and is not subject to objection at the hearing.[2] Moreover, we

[1] *Matter of Westinghouse Electric Corporation*, 73 N. L. R. B 1282; *Matter of Elder Manufacturing Company*, 73 N. L. R. B. 230; *Matter of F. S Lang Manufacturing Company*, 66 N. L. R. B. 473.

[2] *Matter of O D. Jennings & Company*, 68 N. L. R. B. 516.

are administratively satisfied as to the adequacy of the Petitioner's showing.

We therefore find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Petitioner seeks, in effect, a unit consisting of all employees in the Employer's structural shop and welding shop, who are engaged in working on steel plate or materials of a thickness of 10 gauge or greater. This unit includes the following job classifications in the structural shop: lay-out men, fitters, leadingmen bending roll operators, punch and shear operators, duplicators, and helpers; and embraces the following classifications in the welding shop: leading man, welders, burners, burner operators, helpers and yardmen. The Employer and the Intervenor contend, however, that the only appropriate unit is the existing plant-wide unit of production and maintenance employees presently represented by the Intervenor.

The Employer is engaged in the manufacture and sale of placer dredges, mining machinery, and carry alls, a new product which it began to manufacture after the war. The plant consists of a group of six buildings designated as the main building, the forge shop, the heat treating shop, the foundry, the pattern shop and the assembly shop.[3] The main building is occupied by three shops, the machine shop, the structural shop, and the welding shop, the latter functioning as a subdivision of the structural shop. In the course of the Employer's operations, raw materials are received at the plant and are unloaded either in the plant yard or at various shops where the processing or fabrication may begin. Actual manufacturing operations, apparently, do not follow any routine pattern or procedure, although the functions performed by the various shops are highly integrated and are all geared to the production of the final product. Before its completion, a given product may be handled a number of times by the same shop. In the manufacture of a placer dredge, virtually all shops perform some work on the product before it is finished and, in several instances, each of the shops may perform work on each individual piece going into the dredge.

In connection with the employees in the Employer's structural shop and welding shop, and with whom we are solely concerned herein, the record discloses that all these employees are engaged in working on steel plate or materials of a thickness of 10 gauge or greater and that,

[3] The pattern shop and the foundry are operated independently of the plant management on a contract basis.

in almost every instance, they devote approximately 90 percent or more of their time to such work. It indicates further that, for the most part, all such employees are skilled, some to a greater degree than others, and that all perform their duties either directly or indirectly under the supervision of the structural shop foreman, and function virtually as one department.[4] Although they maintain a close working relationship with employees in other departments, and may, from time to time, perform their work in various parts of the plant, it appears that their functions are not interchangeable with those of other workers. With respect to helpers and yardmen, whom the Petitioner desires to include in its proposed unit, the record shows that these employees are assigned to the structural shop and welding shop and that they regularly assist the various skilled employees in the handling of materials in the process of fabrication. It is therefore apparent that the requested employees comprise a cohesive and well-defined group clearly distinguishable from the remaining employees, and that their establishment as a separate collective bargaining unit is feasible.

The collective bargaining history affecting the Employer's operations discloses the following: In February 1938, the Employer executed a collective bargaining agreement with a Federal Labor Union, affiliated with the American Federation of Labor, covering its employees for a term of 1 year. Successive contracts were thereafter executed by the same parties in 1939, 1940, and 1941. The Intervenor, then an affiliate of the American Federation of Labor, became a joint signatory to the 1941 contract, but did not sign the contract for 1942. In 1942, the Employer converted its plant to the production of guns and other ordnance equipment, as a result of which the structural shop was taken over by a tube shop and the number of employees at the entire plant increased from approximately 169 to a peak of approximately 650. Most of these workers were engaged in working with ordnance machines and fell within the jurisdiction of the Intervenor. In March 1943 at a conference called by the Federal Labor Union, and at which various AFL craft unions in the area were present, it was agreed that the Intervenor should be permitted to take over the bargaining rights of the Federal Labor Union.[5] Pursuant to this agreement, the Federal Labor Union terminated its contract with the Employer and dissolved its organization, and in May 1943 the Intervenor executed a new collective bargaining contract with

[4] The foreman of the molding shop is a subforeman of the structural shop foreman and is responsible to him.

[5] It would appear that the Petitioner was not among those present at that conference. The crafts apparently acted upon the promise of the Intervenor to return non-machinists to the jurisdiction of the respective crafts when ordnance operations terminated. The Intervenor, however, denies this obligation and has no intention of yielding jurisdiction to the craft unions.

the Employer covering all production and maintenance employees. Similar contracts were entered into by the same parties in 1944 and again in 1946.

The last-mentioned contract was executed after the Employer had terminated its war production in September 1945 and had effected the reconversion of its plant to peacetime operations. As a result of this reconversion, the tube shop, established during the war, was reconverted to its prewar role as a structural shop and the total number of employees in the plant was reduced to its present number of approximately 326. As noted previously, the Employer in addition thereupon undertook the manufacture of a new product known as carry alls. This resulted in an expansion of employees in the welding shop from a prewar level of 3 or 4 to the present number of 46, and brought the number of employees in the unit sought herein to approximately 115 as of the time of the hearing, a virtual doubling of its size when compared with the complement during the prewar period.

With respect to this bargaining history, upon which the Intervenor and the Employer rely in support of their unit position, we note the following factors which tend to minimize its significance in the instant case: (1) for the first 4 years of this period, the Employer bargained collectively with the Federal Labor Union, the repository of all craft interests at the plant, until such time as any craft desired to step in and assert a claim on employees under its jurisdiction; (2) from 1942 until 1945 the Employer was engaged in the manufacture of guns and other war products which required different operations and skills than under its peacetime operations, and the unit which the Intervenor represented, therefore, was not the same unit for which the Federal Labor Union had been the bargaining agent; (3) the existing plant operation and more particularly the unit sought is virtually double the size it was during the prewar years; and (4) the bargaining history between the Employer and the Intervenor, since the reconversion of the plant in 1945, is of relatively short duration. We note further that this bargaining is not predicated on any prior Board determination. We are of the opinion, therefore, that the bargaining history is not sufficient, in and of itself, to deny the employees in the structural shop and the welding shop the opportunity of deciding whether they desire either to continue to be represented as a part of the existing production and maintenance unit or to bargain as a separate unit. And this is particularly true in view of the added fact that these employees have not had a previous opportunity to vote on this issue, an opportunity which we believe they should now be given.

Accordingly, we shall direct that an election by secret ballot be held among all employees of the Employer in the structural shop and the welding shop who are engaged in working on steel plate or materials of the thickness of 10 gauge or greater, excluding crane operators, 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, subject to the limitations and additions set forth in the Direction.

At this time we shall make no final determination of the appropriate unit. Such determination will depend, in part, upon the results of the election. If the employees in the above voting group select the Petitioner, they will be taken to have indicated their desire to constitute a separate bargaining unit; if they select the Intervenor, they will be taken to have indicated their desire to remain a part of the existing production and maintenance unit.

DIRECTION OF ELECTION [6]

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Yuba Manufacturing Company, Benicia, 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 Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the voting group 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 International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, Locals 39 and 681, AFL, or by International Association of Machinists, District 95 and Local Lodge 1687 (unaffiliated), for the purposes of collective bargaining, or by neither.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Direction of Election.

[6] 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.