

neers, professional employees, guards, foremen, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

[Text of Direction of Election omitted from publication.]

Schye & Sullivan, a partnership, and Riedesel Construction Company, a corporation, a joint venture, Petitioner¹ and International Hod Carriers, Building and Common Laborers Union of America, Local Union No. 98.² *Case No. 19-RM-191. May 29, 1956*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Dan E. Boyd, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. 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, for the following reasons:

The Union, *inter alia*, contends that no question concerning representation exists because at the time the Employer filed its petition herein it had already agreed to negotiate a contract with the Union for the employees involved. We do not agree. The fact that the Employer agreed to negotiate a contract for the employees in question does not negate a question of representation as to preclude the Employer from filing a petition to have the Union certified as the bargaining representative.⁴

The Union also contends that its common laborer contract with Billings Contractors Council to which Riedesel Construction Company, one of the joint venturers herein, is a member, is a bar to this proceeding. We believe that the evidence relating to Riedesel's cover-

¹ The Petitioner's name appears as corrected.

² Montana Council of Laborers, without objections, was permitted to intervene for the sole purpose of filing a joint brief with the Union.

³ The Union's motion to dismiss the petition is denied for reasons hereinafter stated.

⁴ *J. P. O'Neil Lumber Company*, 94 NLRB 1299; *Philadelphia Electric Company*, 95 NLRB 71; also see *Andrews Industries, Inc.*, 105 NLRB 946, 947.

age by the Union's contract is inconclusive. Assuming, however, that the Union does have a contract covering the common laborers of Riedesel as an individual contractor, we think that such a contract cannot bar this proceeding. The question here involved is not one concerning employees of the entity Riedesel Construction Company, but one concerning the representation of employees of joint employers, i. e., Schye & Sullivan and Riedesel Construction Company. The Employer, comprised of the employers named above, is engaged in the joint venture of constructing a highway bridge across the Yellowstone River at Miles City, Montana, at which location the common laborers in question were hired by the Employer. There is no evidence that these laborers were hired by Riedesel as a separate employer or even that they formerly had worked for Riedesel in such capacity. We therefore conclude that such bargaining agreement between the Union and Riedesel Construction Company is not a bar to the petition filed herein by a separate and different employer which, in its joint capacity, has no bargaining agreement covering the employees involved.

4. The Employer-Petitioner seeks an election in a unit of all its common laborers employed in the construction of a highway bridge across the Yellowstone River at Miles City, Montana. These are the same employees for whom the Union requested recognition as bargaining representative. The Union now contends, however, that a unit limited to laborers of the Miles City project is inappropriate and that the appropriate unit is one that would include all employees of the Employer employed in the State of Montana. We do not agree.

It appears that the common laborers are the only classification of employees employed by the joint venture at the Miles City bridge who are not presently represented for bargaining purposes. Further, there is no evidence which indicates that the Employer, as joint venturers, has employees other than those employed at the Miles City project. The proposed unit is therefore a residual unit of the type which the Board has found appropriate. In view of the foregoing, we agree with the Employer that its common laborers, a residual group of unrepresented employees for whom the Union requested recognition, comprise a unit appropriate for purposes of collective bargaining.

We find that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All common laborers of the Employer at its Yellowstone River bridge project Miles City, Montana, excluding all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]