

In the Matter of CAMPBELL MACHINE COMPANY,<sup>1</sup> DAVID C. CAMPBELL and GEORGE E. CAMPBELL, CO-PARTNERS, TRADING AS CAMPBELL MACHINE COMPANY and INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 389; SHIPWRIGHTS, BOATBUILDERS & CAULKERS; and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 569

*Cases Nos. R-249, R-250, and R-251.—Decided October 4, 1937*

*Boat Building and Repairing Industry—Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize petitioning union as exclusive representative; threat of strike—*Unit Appropriate for Collective Bargaining:* craft; established labor organizations in plant; eligibility for membership in petitioning union; occupational differences—*Representatives:* proof of choice: membership in union; comparison of union membership records and current pay roll—*Certification of Representatives:* upon proof of majority representation.

*Mr. David Sokol* for the Board.

*Mr. Frank J. Macomber*, of San Diego, Calif., for the Company.

*Mr. C. L. Bentley*, *Mr. Leroy M. Vay*, and *Mr. Henry Claybourne Rice*, of San Diego, Calif., for International Association of Machinists, Local No. 389.

*Mr. Henry M. Smith*, of San Diego, Calif., for Shipwrights, Boatbuilders & Caulkers.

*Mr. Milton L. Ratcliff*, of San Diego, Calif., for International Brotherhood of Electrical Workers, Local No. 569.

*Mr. Hyman A. Schulson*, of counsel to the Board.

## DECISION

AND

## CERTIFICATION OF REPRESENTATIVES

### STATEMENT OF THE CASE

On June 21, 1937, International Association of Machinists, Local No. 389, herein called the I. A. M., Shipwrights, Boatbuilders & Caulkers, herein called the Shipwrights, and International Brotherhood of Electrical Workers, Local No. 569, herein called the I. B. E. W., filed separate petitions with the Regional Director of the National Labor Relations Board for the Twenty-first Region (Los Angeles, California), alleging that questions affecting com-

<sup>1</sup> In accordance with the stipulation entered into by counsel for the Company, the names of the individual co-partners have been added to the title.

merce had arisen concerning the representation of certain employees of Campbell Machine Company, San Diego, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 23, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing; and the Board further ordered, pursuant to Article III, Section 10 (c) (2) of the Rules and Regulations—Series 1, as amended, that the three cases be consolidated for the purposes of hearing. Notice of hearing on the petitions was duly served upon the Company and upon the three petitioning unions.

The Company filed answers to the petitions admitting its refusal to recognize the three petitioning unions as the sole bargaining agents for the employees involved in the units described in the petitions and denying that the said unions had ever been designated by the employees in the units described in the petitions as the sole and exclusive bargaining agents. The answers further alleged that the Company was not engaged in commerce as defined by the Act and therefore was not within the Board's jurisdiction.

Pursuant to an amended notice of hearing duly issued and served upon the parties, a hearing was held in San Diego, California, on August 18, 1937, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board. At the hearing the Board, the Company, the I. A. M., the Shipwrights, and the I. B. E. W. were represented by counsel.

Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner on motions and objections directed to the issues raised by the petitions and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE COMPANY AND ITS BUSINESS

Campbell Machine Company is a copartnership consisting of David C. Campbell and George E. Campbell, the owners of a 75 per cent and a 25 per cent interest in the partnership, respectively. The Com-

pany is engaged in the manufacture and repair of boats, principally tuna clippers, and maintains for the conduct of that business a large fully integrated shipbuilding and repair plant, and a marine railway and dock at the foot of Eighth Avenue in the City of San Diego, California. From January 1, 1936 to August 4, 1937, the Company manufactured and delivered to purchasers at its plant in San Diego, California, 11 new boats for use in the tuna fishing trade, having a billed sales value of \$857,177.46. From January 1, 1936 to July 31, 1937, the Company did a repair business, principally upon tuna clippers, of the value of \$478,002.88. The boats repaired and built range in size from 45 feet to 135 feet in length. The Company advertises in newspapers and trade magazines.

The principal materials used by the Company in the manufacture and repair of boats are iron, steel, lumber, cork, rubber, machinery, metal fixtures, fittings, valves, electrical equipment, paint, insulating material, fire prevention equipment, life-saving equipment, rigging, and navigating outfit, etc. An analysis of the Company's purchases from January 1, 1936 to July 31, 1937, discloses that orders for materials for use in both construction and repairs amounted to \$922,749.87, of which \$15,017.73, or 1.6 per cent of the total, was ordered directly from producers in States other than the State of California. The materials were shipped to San Diego, California, by rail, boat, and motor truck.

On August 4, 1937, the Company employed approximately 264 employees, of whom 38 work in the machine shop, 146 in the carpenter shop, eight in the electric shop, 17 in the welding shop, nine in the stock room, and six in the office, and two act as watchmen.

The tuna fishing, canning, and shipping industry is the principal industry of San Diego, California. Official statistics prepared by the Division of Fish and Game of California, Bureau of Commercial Fisheries,<sup>2</sup> show that during the year 1936, 177,855 pounds of bluefin tuna and 126,975 pounds of yellowfin tuna were caught off the coast of California and brought to the port of San Diego, California. Even more significant are statistics from the same source showing that during the year 1936, 1,094,975 pounds of bluefin tuna and 57,924,714 pounds of yellowfin tuna caught south of the international boundary between the United States and Mexico were brought to the port of San Diego, California. The relative importance of these quantities is established by comparison with the totals of 18,924,883 pounds of bluefin tuna and 76,318,752 pounds of yellowfin tuna brought into California during the same period.<sup>3</sup>

The tuna clippers built and repaired by the Company necessarily

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<sup>2</sup> Board's Exhibit No. 2.

<sup>3</sup> Board's Exhibit No. 3.

cruise beyond the three-mile limit in the ordinary course of their operations and frequently make their actual catches of fish offshore from 1,000 to 1,500 miles, and as far south as the Equator, the Cedros, McKeesy, and Galapagos Islands.<sup>4</sup> After each voyage, averaging approximately 30 days, the vessels tie up at San Diego, California, for a week to ten days for repairs. Certain of the necessary repairs, such as the repair of propellers and the cleaning of tuna clippers, can be performed in San Diego only at the plant of the Company, which is the largest Company in San Diego and the only one equipped to do such work.

We find that the aforesaid repairing and building operations of the Company are performed upon instrumentalities which engage in trade, traffic, transportation, and commerce among the several States, and with foreign countries and on the high seas.

## II. THE UNIONS

International Association of Machinists, Local No. 389, is a labor organization admitting to membership the machinists, welders, machinists' helpers, welders' helpers, and apprentices employed by the Company. It is a local union of an international union affiliated with the American Federation of Labor.

Shipwrights, Boatbuilders & Caulkers is a labor organization admitting to membership all of the carpenters, shipwrights, boatbuilders, caulkers, joiners, and their helpers and apprentices, employed by the Company. It is a local union of the United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor.

International Brotherhood of Electrical Workers, Local No. 569, is a labor organization admitting to membership all electrical workers employed by the Company. It is a local union of an international union affiliated with the American Federation of Labor.

## III. THE APPROPRIATE UNITS

In its petition the I. A. M. alleged that machinists, helpers, and apprentices employed by the Company constitute a unit appropriate for the purposes of collective bargaining. At the hearing the I. A. M. desired to include welders and welders' helpers within this unit. The petition of the Shipwrights set forth that shipwrights, boatbuilders, and caulkers employed by the Company constitute a unit appropriate for purposes of collective bargaining. The petition of the I. B. E. W. alleged that all electrical workers employed

<sup>4</sup> Board's Exhibit No. 3.

by the Company constitute a unit appropriate for purposes of collective bargaining.

There is no controversy raised either by the Company, or between any of the petitioning unions as to the appropriate units for the purposes of collective bargaining. The petitioning unions are willing and, in fact, anxious to include foremen and assistant foremen within the appropriate bargaining units, since they are eligible to membership in each of the labor organizations. At the hearing the Company raised no objection to their being included within the units. They will therefore be included. We will exclude watchmen, stock room employees, and the office force, as it is clear that each of these groups has functions sharply distinguished from those of the other employees.

In order to insure to the employees of the Company the full benefit of their right to organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that the following groups of employees of the Company, including foremen and assistant foremen, constitute three separate and distinct units appropriate for the purposes of collective bargaining:

- (1) machinists, machinists' helpers, machinists' apprentices, welders, welders' helpers, and welders' apprentices;
- (2) shipwrights, boatbuilders, and caulkers; and
- (3) electrical workers.

#### IV. THE QUESTION CONCERNING REPRESENTATION

The I. A. M. claims to represent a majority of the machinists, machinists' helpers, machinists' apprentices, welders, welders' helpers, and welders' apprentices, including foremen and assistant foremen, employed by the Company; the Shipwrights claim to represent a majority of the shipwrights, boatbuilders, and caulkers, including foremen and assistant foremen, employed by the Company; and the I. B. E. W. claims to represent a majority of the electrical workers, including foremen and assistant foremen, employed by the Company. The Company has refused to bargain collectively with the petitioning unions as sole bargaining agents for the employees in the units in which they claim to represent a majority. As a result, each of the petitioning unions has taken a strike vote, although in the case of the I. A. M., the international officials have forbidden the strike until the question of representation has been decided by the Board.

Upon the basis of these facts we find that a question affecting commerce has arisen concerning the representation of employees of the Company.

## V. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We found above that the repairing and building operations of the Company are performed upon instrumentalities which engage in trade, traffic, transportation, and commerce among the several States and between the several States and with foreign countries and on the high seas. The Company's employees in each of the three units, designated above under Section III, are thus engaged in operations which constitute a necessary and integral part of such commerce; such building and repairing are essential to the regular and effective functioning of such instrumentalities.

We find that the question concerning representation, which has arisen, occurring in connection with the operations of the Company, described in Section I above, has a close, intimate, and substantial relation to trade, traffic, transportation, and commerce among the several States, and with foreign countries and on the high seas, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## VI. THE EXCLUSIVE BARGAINING AGENCY

At the hearing current pay rolls of the Company were introduced. The representatives and officers of the petitioning unions, during the hearing, testified from the membership records of their organizations. A comparison of the membership records and the pay rolls disclosed that in each instance the petitioning union had the membership of a substantial majority of the employees in the unit in which it sought certification. All the electrical workers employed by the Company are members of the I. B. E. W. One hundred and two out of the 146 employees in the carpenter shop of the Company are members of the Shipwrights. Forty-one out of the 55 employees in the machine shop and welding shop of the Company are members of the I. A. M. The Company neither contended nor introduced any evidence to show that the evidence concerning the membership of the employees in the petitioning unions was in any way unreliable nor did it object thereto.

Counsel for the Company claims a distinction between membership in a labor organization, and the designation and selection of such an organization as a representative for purposes of collective bargaining. Since the primary and well known function of labor organizations, including the unions in the present case, is collective bargaining, the Board believes no such distinction can be drawn. By voluntarily joining a labor organization an employee in effect designates that labor organization as his representative for purposes of collective bargaining. Furthermore, in this case, the employees at-

tended meetings in substantial numbers and participated in the drafting of the proposed contract to be submitted to the Company.

Counsel for the Company suggested that the Company would be more willing to engage in collective bargaining with the petitioning unions in the event a formal election conducted by the Board should result in their favor. Under the circumstances of this case no secret ballot is necessary. The evidence is clear and uncontradicted that the employees in each of the above described units have designated and selected the respective petitioning unions as their representatives for the purposes of collective bargaining. We therefore will certify the I. A. M. as the exclusive representative of the machinists, machinists' helpers, machinists' apprentices, welders, welders' helpers, welders' apprentices, including foremen and assistant foremen, employed by the Company; the Shipwrights as the exclusive representative of the shipwrights, boatbuilders, and caulkers, including foremen and assistant foremen, employed by the Company; and the I. B. E. W. as the exclusive representative of the electrical workers, including foremen and assistant foremen, employed by the Company.

#### CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. The following groups of employees of the Company, including in each such group foremen and assistant foremen, constitute three separate and distinct units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act:

- (1) machinists, machinists' helpers, machinists' apprentices, welders, welders' helpers, and welders' apprentices;
- (2) shipwrights, boatbuilders, and caulkers; and
- (3) electrical workers.

3. International Association of Machinists, Local No. 389, having been selected for the purposes of collective bargaining by the majority of the machinists, machinists' helpers, machinists' apprentices, welders, welders' helpers, and welders' apprentices, including foremen and assistant foremen, employed by the Company, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of

collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

4. Shipwrights, Boatbuilders & Caulkers, having been selected for the purposes of collective bargaining by the majority of the shipwrights, boatbuilders, and caulkers, including foremen and assistant foremen, employed by the Company, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

5. International Brotherhood of Electrical Workers, Local No. 569, having been selected for the purposes of collective bargaining by the majority of the electrical workers, including foremen and assistant foremen, employed by the Company, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

#### CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that:

1. International Association of Machinists, Local No. 389, has been selected by a majority of the machinists, machinists' helpers, machinists' apprentices, welders, welders' helpers, and welders' apprentices, including foremen and assistant foremen, employed by the Campbell Machine Company, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Association of Machinists, Local No. 389, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

2. Shipwrights, Boatbuilders & Caulkers has been selected by a majority of the shipwrights, boatbuilders, and caulkers, including foremen and assistant foremen, employed by the Campbell Machine Company, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Shipwrights, Boatbuilders & Caulkers is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

3. International Brotherhood of Electrical Workers, Local No. 569, has been selected by a majority of the electrical workers, including foremen and assistant foremen, employed by the Campbell Machine Company, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Brotherhood of Electrical Workers, Local No. 569, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.