

In the Matter of COMBUSTION ENGINEERING COMPANY, INC. and STEEL WORKERS ORGANIZING COMMITTEE, FOR AND IN BEHALF OF AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA

*Case No. R-242*

ORDER DISMISSING PETITIONS

*May 11, 1938*

On February 16, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election<sup>1</sup> which provided, inter alia, that three elections be held among the employees of the Hedges-Walsh-Weidner division of Combustion Engineering Company, Inc., except those employed in the foundry.

In its Decision the Board made no final determination as to the appropriate units for the purposes of collective bargaining, except that the foundry employees constitute an appropriate unit for such purposes. The International Association of Machinists, Lodge No. 56, herein called the I. A. M., contended that the following classified employees, herein called the Machinists, constitute an appropriate unit: All machinists, machinists' helpers and apprentices, header-mill specialists, drill-press operators and helpers, milling-machine operators, drill-machine operators, bolt-machine operators, handy men, engineers, crane operators employed in the machine shops, planer operators, repairmen, maintenance men, and toolroom helpers, exclusive of those employed in the foundry. International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers, Subordinate Lodge No. 656, herein called the Brotherhood, contended that the following classified employees, herein called the Boilermakers, constitute an appropriate unit: All boilermakers and helpers, welders and welding-machine operators, welders' helpers and apprentices, galvanizers, form-press operators, form-machine operators, fit-up men (except those working on cast iron boiler castings), layers-out and helpers, chippers, grinders, burners, furnace operators, riveters and rivet-machine operators, rivet heaters, reamers, rod-room men, testers, test-pit helpers, boilermakers' mechanics, tube men, inspectors and helpers, punch-shear operators, X-ray helpers, subforemen, flange workers, and tapping-machine operators and helpers, exclusive of those employed

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<sup>1</sup> 5 N. L. R. B. 344; see also Amendment to Direction of Elections, issued March 7, 1938 (5 N. L. R. B. 356).

in the foundry. Steel Workers' Organizing Committee, herein called the S. W. O. C., contended that all of the above-designated employees, together with other production and maintenance employees, except supervisory employees, clerical employees, and foundry employees constitute an appropriate unit. The Board stated that since any of the contentions could be sustained it would direct that separate elections be held among the Machinists, the Boilermakers, and all other production and maintenance employees, except supervisory employees, clerical employees, and foundry employees, and would decide the issue on the basis of the preferences indicated by the employees in the election. It therefore directed that elections by secret ballot be held (a) among the Machinists to determine whether they desire to be represented by the I. A. M. or the S. W. O. C., for the purposes of collective bargaining, or by neither; (b) among the Boilermakers to determine whether they desire to be represented by the Brotherhood or the S. W. O. C., for the purposes of collective bargaining, or by neither; and (c) among all other production and maintenance employees, except supervisory employees, clerical employees, and foundry employees, to determine whether they desire to be represented by the S. W. O. C., for the purposes of collective bargaining. Upon the results of the elections would depend the determination of the appropriate unit or units. Such of the groups not choosing the S. W. O. C., appearing herein on behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America, would constitute separate and distinct appropriate units and such of the groups choosing the S. W. O. C. would together constitute a single appropriate unit.

Pursuant to the Direction of Elections, secret ballots were conducted on March 21, 1938. A majority of the employees who participated in the election conducted among the Boilermakers; and a majority of the employees who participated in the election conducted among the employees constituting the third unit described above, cast their ballots for the S. W. O. C.

In accordance with the desire of the employees as indicated in the elections, the Board issued its Supplemental Decision and Certification of Representatives on April 7, 1938,<sup>2</sup> in which, inter alia, it certified the Amalgamated Association of Iron, Steel and Tin Workers of North America as the exclusive representative of the Boilermakers and all other production and maintenance employees, exclusive of foundry employees, supervisory employees, clerical employees, and Machinists, for the purposes of collective bargaining.

Thereafter the Company, the Brotherhood, and a group of approximately 220 employees of the power boiler and sheet metal shops,

<sup>2</sup> 6 N. L. R. B. 488.

filed petitions requesting the Board to reconsider its Certification of Representatives described above and protesting against the inclusion in one unit of the Boilermakers employed in the power boiler, range boiler and sheet metal shops. In substance each petition alleges that those employees classified as Boilermakers should not have voted as a group to determine whether they desire to be represented by the Brotherhood or by the S. W. O. C.; they urge that these employees should have been separated into three appropriate units, namely: employees in the two power boiler shops, employees in the sheet metal shop, and employees in the range boiler shop. The petition of the Company alleges that the employees of the power boiler shops and the sheet metal shop went out on strike on April 13, 1938, in protest against the Board's findings with respect to the appropriate units.

The determination of the appropriate unit herein unquestionably followed the desires of the Brotherhood as indicated in the record of this proceeding. The Brotherhood's petition protesting this determination represents a change of position clearly without merit.

This proceeding was initiated following a petition filed by the S. W. O. C. requesting an investigation and certification of representatives and alleging that the unit appropriate for the purposes of collective bargaining was an industrial unit consisting of all production and maintenance employees, except supervisory employees, throughout the entire plant. The Brotherhood, in its motion to intervene in the proceedings, alleged:

Boilermakers, welders, apprentices and helpers and other employees performing such work as is generally recognized as coming within the jurisdiction of our organization, employed at this plant, constitute an appropriate unit for collective bargaining and should not be included in any more inclusive unit.<sup>3</sup>

It thus contended that a craft unit consisting of all employees classified as Boilermakers constituted an appropriate unit. At the opening of the hearing, the Brotherhood reaffirmed its position:

Trial Examiner PARADISE. I take it that the (Brotherhood) is contending here, as stated in its motion of intervention that the Boiler Makers, Welders, Apprentices and Helpers and other employees perform (ing) such work as is generally recognized as coming within the jurisdiction of that organization which are employed at both of the plants in Chattanooga constitute an appropriate unit for collective bargaining?

Mr. WALTER (counsel for the Brotherhood). That is right.

During the course of the hearing, the Brotherhood departed from its original contention, and through its counsel, asserted that the Boiler-

<sup>3</sup> Both the petition of the S. W. O. C. and the Brotherhood's motion to intervene were amended at the hearing to exclude all foundry employees.

makers should constitute three separate units: Boilermakers employed in the power boiler shops, Boilermakers employed in the range boiler shop, and Boilermakers employed in the sheet metal shop, presumably leaving the unskilled employees in these shops to constitute still another unit. This change of position was not seriously pressed nor was any convincing testimony elicited to sustain it. The Brotherhood claimed to represent a majority of the Boilermakers in each of these shops and soon reverted to its original contention that all Boilermakers constitute a single appropriate unit:

Trial Examiner PARADISE. You don't want the skilled and semi-skilled men and apprentices and helpers in all of those three departments to be represented by the boilermakers as one unit, do you?

Mr. WALTER. *If the Board so decides, yes.* (Italics ours.)

Thereafter, for the most part, the hearing, following out the language of the Brotherhood's petition, was devoted to the determination of the jurisdiction of the Brotherhood as it applied to the employees throughout the plant. A summary of the respondent's pay roll for all the shops in this plant, after an analysis by Brotherhood witnesses and representatives, showed that this organization claimed jurisdiction over 521 employees working throughout the various shops of the plant. Indeed, the Brotherhood claimed jurisdiction over six Boilermakers employed in the machine shops, as coming within the appropriate unit.

The majority of this Board recognized the Brotherhood's contention that all Boilermakers constitute an appropriate unit to the extent of permitting these employees to decide for themselves whether they desired to be represented by the Brotherhood. Upon such basis the election herein was ordered.

The Brotherhood made no formal protest to the Decision and Direction of Elections herein issued on February 16, 1938, and it is clear that the Direction of Election conformed to its desire. The Brotherhood's refusal now to abide by the expressed desires of the majority of employees of its own craft as indicated by the results of this election constitutes a reversal of its position urged upon the Board at the hearing, and an attempt to split its own craft into small units in order to win an election in one or some of those units.

For the foregoing reasons, we see no merit in the petitions now before us. Accordingly,

IT IS HEREBY ORDERED that the petitions of the Combustion Engineering Company, Inc., International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America, and the employees of the power boiler and sheet metal shops be, and they hereby are, dismissed.