

In the Matter of THE NOVELTY STEAM BOILER WORKS and LOCAL 101,
WELDERS, BURNERS, APPRENTICES, A. F. OF L.

Case No. R-317.—Decided June 17, 1938

Steel Tank Manufacturing Industry—Investigation of Representatives: petition for, dismissed, where no question concerning the representation of employees in a unit which could be found appropriate has arisen.

Mr. Owsley Vose and Mr. Charles V. Latimer, for the Board.
Mr. Herbert Fuchs, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 29, 1937, International Brotherhood of Boilermakers, Iron Ship Builders, Welders & Helpers of America, Monumental Welders Lodge No. 101,¹ herein called the Union, filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Novelty Steam Boiler Works Company,² Baltimore, Maryland, 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 August 5, 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, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 31, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to the notice, a hearing was held on September

¹ Incorrectly designated as Local 101, Welders, Burners, Apprentices, A. F. of L. in the order directing investigation.

² Incorrectly designated as The Novelty Steam Boiler Works in the order directing investigation.

20, 1937, at Baltimore, Maryland, before John H. Diefenderfer, the Trial Examiner duly designated by the Board. The Board was represented by counsel and the Company by its president. The Board and the Company participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner 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 BUSINESS OF THE COMPANY

The Company is a Maryland corporation engaged in the manufacture and sale of steel tanks at a plant in the City of Baltimore. The principal raw material used by the Company is steel, most of which is shipped to the plant by rail from mills in Ohio and Pennsylvania. Most of the machines in use at the Company's plant were purchased from manufacturers located outside the State of Maryland.

The steel tanks produced by the Company are used for the storage of liquids. They are sold, directly or indirectly, to gasoline stations and to manufacturers and distributors of oil burners. About 60 per cent of the Company's sales are made to customers outside the State of Maryland.

The Company competes with similar businesses on a nation-wide scale. It has a weekly pay roll between \$800 and \$4,500, and manufactures between 200 and 600 steel tanks monthly. At the time of the hearing it employed 61 men.

II. THE UNION

International Brotherhood of Boilermakers, Iron Ship Builders, Welders & Helpers of America, Monumental Welders Lodge No. 101, is a labor organization affiliated with the American Federation of Labor. Neither the constitution of the International Brotherhood nor the charter of the Union was introduced in evidence. It was testified, however, that the Union admits to membership welders, burners, and apprentices employed in boiler shops in and around Baltimore, with the qualification that candidates must be classified and principally employed as welders or as burners.

III. THE APPROPRIATE UNIT

The manufacture of steel tanks at the Company's plant involves the successive processes of laying-out, shearing, punching, rolling, breaking-out, angle rolling, baffling, welding, and caulking. Each process prior to welding requires, or may require, work with the acetylene burning torch. Of the Company's 61 employees, 15 use electric welding tools and are classified as welders.

The Union contends that the welders alone comprise a unit appropriate for the purposes of collective bargaining. It claims to represent the proposed unit by virtue of a petition signed by 13 of the 15 welders designating it as their bargaining agent. The Union's president testified that welding is differentiated from other work at the plant in that it requires a degree of special experience and skill; that insurance companies and other institutions conduct examinations for the certification of qualified welders; that welders are exposed to special occupational hazards, and that they consider themselves and are generally considered to be highly skilled craftsmen. He stated, also, that all other employees of the plant are excluded from membership in the Union because they are classified and principally employed neither as welders nor as burners.³

The record indicates that the welders in the Company's employ frequently participate in work of the plant other than welding, receive approximately the same pay as other employees, and work in close proximity with them. The president of the Company testified that 46 of its employees, who use the acetylene burning torch, including the 15 welders, are properly classifiable as burners within the meaning of the Union's membership qualifications.

In *Matter of Great Lakes Engineering Works and Welders International Association*⁴ we said :

In most industries welding and burning are operations performed by skilled workmen in connection with their work in a broader field, as for example, the craft of boiler making. Welding and burning are performed in connection with the construction and repair of boilers which requires, in addition, craftsmen particularly skilled in other operations. This is also true of

³ We note that the Union excludes workers and types of work which fall within the jurisdiction claimed by its International, *e g.* "The construction, erection, assembling, and repairing of all boilers, drums, tanks, parts, and work in connection therewith, including . . . steam, air, gas, oil, water, or other liquid tanks or containers . . . also all acetylene and electric welding or any other welding process used on work coming under our classification" (Constitution of International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, U S Department of Labor Bulletin No 618; Handbook of American Trade-Unions, 1936 Edition)

⁴ 5 N L R. B. 788, decided March 4, 1938

nearly every industry requiring use of the burning or welding process. Consequently, welders and burners, or either alone, do not constitute a distinct craft and are in most cases necessarily merged into crafts with which their work is associated.

In that case we recognized an exception to the general rule upon a showing that the welders and burners there involved had been segregated into one department under one foreman for a period of 20 years. The instant case offers no occasion for departure from the rule. We find that a unit composed solely of the welders employed at the Company's plant is not appropriate for the purposes of collective bargaining. The petition filed in this proceeding relates solely to representation of the welders. We need not determine what would be an appropriate unit if the petition were broader in scope.

IV. THE QUESTION CONCERNING REPRESENTATION

Since, as stated in Section III, we are unable to find an appropriate unit within the scope of that alleged in the petition filed in this case, we must find that no question has been raised concerning the representation of employees of the Company in an appropriate bargaining unit.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSION OF LAW

No question concerning the representation of employees of The Novelty Steam Boiler Works Company in a unit which could be found appropriate for the purposes of collective bargaining has arisen within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusion of law the National Labor Relations Board hereby dismisses the petition for investigation and certification filed by International Brotherhood of Boilermakers, Iron Ship Builders, Welders & Helpers of America, Monumental Welders Lodge No. 101.

MR. EDWIN S. SMITH, dissenting:

Under the circumstances of this case, I believe the unit consisting of the welders, which was petitioned for by the Union, is appropriate, and that the Union should be certified as representing the welders for the purpose of collective bargaining.

The union seeking to represent the welders is the only labor organization in the plant. There is no contention by another union that the welders do not represent an appropriate unit or that collective bargaining would best be promoted by combining the welders with other employees to form a more comprehensive unit. Whenever a labor organization seeking to bargain for a more representative and inclusive unit should appear on the scene, it would be proper to consider further the validity of the appropriateness of the welders as a unit. Currently this problem does not exist. The Union has a local in Baltimore composed of welders, to which the welders in this case belong. The welders employed by this Company are a skilled group, having common economic problems in respect to their employer. For the more advantageous solution of these problems they are seeking to bargain collectively. It seems to me entirely in accord with the letter and spirit of the Act that permission to do this should be granted them by the Board.