

In the Matter of BETHLEHEM STEEL COMPANY, SHIPBUILDING DIVISION, HOBOKEN YARD and INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA, LOCAL #15, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 2-R-4190.—Decided October 8, 1943

Mr. John L. Wynne, of Bethlehem, Pa., for the Company.

Mr. Samuel L. Rothbard, of Newark, N. J., and *Mr. Thomas A. Flaherty*, of Hoboken, N. J., for the Union.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Union of Marine & Shipbuilding Workers of America, Local # 15, affiliated with the Congress of Industrial Organizations, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company, Shipbuilding Division, Hoboken Yard, Hoboken, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Vincent M. Rotolo, Trial Examiner. Said hearing was held at Jersey City, New Jersey, on September 17, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

The Company moved the dismissal of the petition on grounds of inappropriateness of the unit petitioned for. For reasons hereinafter given, the motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

52 N. L. R. B., No. 213.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem Steel Company is a Pennsylvania corporation having offices for its Shipbuilding Division in New York City. The Shipbuilding Division is engaged at its Hoboken Yard in the repair, alteration and conversion of ships. During the calendar year 1942, the aggregate value of all materials of the Company used in such work at its Hoboken Yard (not including the value of any material which it manufactured at such Yard) was in excess of \$1,000,000, of which more than 90 percent was delivered to said Yard from points outside the State of New Jersey. During said year the aggregate amounts billed by the Company for such work at the Hoboken Yard were in excess of \$1,000,000, of which more than 90 percent was billed in respect of work on ships which were destined for use in interstate and foreign commerce, or for the United States Government.

For the purposes of this proceeding, the Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of Marine & Shipbuilding Workers of America, Local # 15, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the guards employed at its Hoboken Yard on the ground that guards are not employees within the meaning of the Act.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

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

¹The Regional Director reported that the Union submitted 89 application-for-membership cards, 75 of which bore apparently genuine original signatures which correspond with names listed on the Company's pay roll of August 23, 1943, which contained the names of 109 employees in the appropriate unit; and that the cards were dated 1 in 1937, 7 in 1942, 65 in August 1943, 2 undated.

IV. THE APPROPRIATE UNIT

The Company contends that because of the nature of their duties, guards are part of the management force; that their interests are opposed to and in conflict with the interest of employees in the production yard and that they are, therefore, not employees within the meaning of the Act. The Company further contends that if guards are employees, they cannot properly constitute a unit for collective bargaining to be represented by the Union, because the Union represents its production employees, and brotherhood in the same union with the persons against whom some of their activities are directed, would deter them from the proper performance of their duties.

The guards have the duty of protecting life and the property of the Company and enforcing the Company's rules as well as city ordinances and Navy regulations when the occasions arise. They take no disciplinary action themselves but report infractions of rules to the sergeants who in turn report to the chief who reports to the foreman in charge. On rare occasions, in case of emergency, they have access to personnel files in the office of the Company for the purpose of identifying and notifying necessary workers of the emergency work to be done. These records contain no confidential matter relating to labor relations between the Company and its employees. They are all members of the United States Coast Guard Reserve and are subject to the orders and discipline of the Navy but they are paid,² hired and discharged by the Company. They are entitled to the benefits of all other employees of the Company and, are subject to the same discipline. Their duties are assigned by the Company.

The questions raised by the Company concerning guards of the above description have many times come before the Board. The Board has carefully considered and reconsidered the problem presented but has always come to the conclusion that militarized guards are employees within the meaning of the Act and they have a right to be represented in a unit of their own by a union of their choice whether or not that union also represents other employees of the plant in another unit.³

We find that all guards of the Company at its Hoboken Yard excluding sergeants and the chief guard constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

² The Navy reimburses the Company for the salaries of certain extra guards whom the Navy thought necessary.

³ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Firestone Tire & Rubber Co of California*, 51 N. L. R. B. 485; *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

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, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Bethlehem Steel Company, Shipbuilding Division, Hoboken Yard, Hoboken, New Jersey, 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 Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit 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, to determine whether or not they desire to be represented by Industrial Union of Marine & Shipbuilding Workers of America, Local #15, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.