

In the Matter of CONSOLIDATED SHIPBUILDING CORPORATION and INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA, LOCAL 38, CIO

Case No. 2-R-4218.—Decided October 15, 1943

Mr. Arthur H. Haaren, of New York City, for the Company.

Boudin, Cohn & Glickstein, by Mr. H. N. Glickstein, of New York City, for the Union.

Mr. Louis Cokin, 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 38, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Consolidated Shipbuilding Corporation, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Davis, Trial Examiner. Said hearing was held at New York City, on September 28, 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Consolidated Shipbuilding Corporation is engaged in repairing and constructing ships at its shipyard, located at Morris Heights, New York, New York. During 1942 the Company used materials valued in excess of \$1,000,000, of which 90 percent was shipped to it from points

outside the State of New York. During the same period the Company built ships for the United States Army and Navy valued in excess of \$1,000,000. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Industrial Union of Marine & Shipbuilding Workers of America, Local 38, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 15, 1943, the Union wrote to the Company requesting recognition as the exclusive bargaining representative of the employees in the unit hereinafter found appropriate. The Company has refused to grant such recognition until the Union is certified by the Board in an appropriate unit.

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.

IV. THE APPROPRIATE UNIT

The Union contends that all fire watchers and fire guards of the Company, excluding the chief guard, constitute an appropriate bargaining unit. The Company contends that the fire watchers and fire guards are representatives of management and are, therefore, not employees within the meaning of the Act. The Company further argues that since the Union already represents the production and maintenance employees, it is improper to permit the fire watchers and fire guards to be represented by the same labor organization, even in a separate bargaining unit.

There are approximately 26 employees in the fire department. The functions of the fire department are the prevention of fire and the protection of company property and vessels being built or repaired in the yards from loss by fire. The employees in question are assigned to new construction and buildings and patrol the areas assigned to them for the purpose of watching for fire and conditions which con-

¹The Regional Director reported that the Union submitted 18 authorization cards bearing apparently genuine signatures of persons listed on the Company's pay roll of September 9, 1943, which contained the names of 26 employees in the appropriate unit.

stitute fire hazards. The fire guards are not militarized, armed, or uniformed. We find that the fire watchers and fire guards are employees within the meaning of the act.²

The second argument raised by the Company deals with a possible conflict of interests which may arise when plant-protection employees join a labor organization. We give no weight to the implication that membership in a union tends to undermine the honesty of plant-protection employees or their competence to execute their duties satisfactorily. Self-organization for collective bargaining is not incompatible with efficient and faithful discharge of duty. Should the performance of an employee deteriorate, the Company always has recourse to its normal disciplinary authority to insure the maintenance of its standards of work. We find, accordingly, that fire watchers and fire guards may properly constitute an appropriate bargaining unit.³

We find that all fire watchers and fire guards of the Company, excluding the chief guard and any other supervisory employees with authority to hire, promote, discharge, or discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a separate unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. We shall direct, in accordance with a stipulation of the parties, that the employees eligible to vote shall be those within the appropriate unit whose names appear on the Company's pay roll of September 9, 1943, subject to the limitations and additions set forth in the Direction of Election herein.

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 the 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 Consolidated Shipbuilding Corporation, New York City, 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

² See *Matter of Chrysler Corporation, Highland Park Plant*, 44 N. L. R. B. 881.

³ See *Matter of Dravo Corporation*, 52 N. L. R. B. 322.

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, whose names appear on the September 9, 1943, pay roll of the Company, 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 any 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 38, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.