

In the Matter of THE ARUNDEL CORPORATION and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, CIO (LOCAL 43)

Case No. 5-R-1370.—Decided November 6, 1943

Mr. G. Donald Schaub, of Baltimore, Md., for the Company.

Messrs. Joseph DiGiacomo and William Fwehley, of Baltimore, Md., for the C. I. O.

Mr. Jacob Blum, of Baltimore, Md., for the A. F. of L.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., Local 43, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of The Arundel Corporation, Fairfield, Maryland, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before David H. Werther, Trial Examiner. Said hearing was held at Baltimore, Maryland, on October 4, 1943. The Company, the C. I. O., and Baltimore Building and Construction Trades Council, A. F. L., herein called the A. F. of L., 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 the opportunity for filing 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

The Arundel Corporation, a Maryland corporation, has its principal office and place of business in Baltimore, Maryland, with branch offices in New York City, Maine, Florida, and Los Angeles, California.

¹ Incorrectly described in the petition and other formal papers as "Arundel Corporation", and corrected by motion at the hearing.

The Company is principally engaged in construction and reclamation projects, dredging, and bridge work. Contract work performed in 1942, including the Company's share of joint ventures in which it participated, totaled approximately \$27,500,000 for dredging and construction work in more than 13 States of the United States and Puerto Rico.

The Company is also engaged in the production and distribution of sand and gravel, crushed stone, crushed slag, and ready-mixed concrete, all of which materials are produced in the State of Maryland. During the first 6 months of 1943, the Company sold such products of a value in excess of \$800,000, of which approximately 8½ percent of value was shipped to points outside the State of Maryland.

The Company owns and operates a fleet of tugs and barges and a fully equipped ship repair yard at Fairfield, Maryland, with which latter operation this proceeding is concerned. The Fairfield yard is engaged in repairing tugs, barges, dredges, and miscellaneous vessels, steam shovels, cranes, bulldozers, and various construction equipment. In connection with the operation of its repair yard, the Company purchased during the first 6 months of 1943 raw materials of a value in excess of \$79,422.00, of which approximately 20 percent of value, was shipped to the repair yard from points outside the State of Maryland.

The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America, Local 43, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Baltimore Building and Construction Trades Council is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 18, 1943, and several times thereafter, the C. I. O. requested that the Company bargain with it as representative of the employees at the Company's Fairfield ship repair yard. Upon the failure of the Company to indicate definitely whether it would bargain collectively, the C. I. O. filed its present petition for investigation and certification of representatives.

A statement of a Field Examiner for the Board introduced into evidence at the hearing, indicates that the C. I. O. represents a sub-

stantial number of employees in the unit hereinafter found appropriate.²

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 C. I. O. contends that the appropriate unit should consist of all production and maintenance employees, including truck drivers, employed at the Company's Fairfield ship repair yard, excluding supervisors, foremen, assistant foremen, and clerical employees. The Company and the A. F. of L. do not generally dispute the specific categories sought to be included or excluded,³ but do contend that the appropriate unit should include all employees of the Company in every phase of the Company's operations and activities within the State of Maryland.

The scope of the Company's operations within the State of Maryland in addition to the Fairfield ship repair yard, covers 6 sand and gravel plants, 4 stone quarries, 4 ready-mixed concrete plants, and 1 truck loading station, all of which are located at widely separated points, ranging in distance from 1½ to 115 miles from the ship repair yard. Each of the sand and gravel plants, the 4 quarries collectively, and the Fairfield ship repair yard, has its own superintendent or manager who is in full charge of the operations of his particular plant. The superintendents or managers in charge of the various sand and gravel plants and quarries are responsible for the performance of their duties to a company vice president, though the superintendent of the Fairfield ship repair yard is responsible only to the President of the Company. The superintendent or manager of each plant has the sole power to hire and discharge employees in his particular plant. Each plant maintains its own pay roll, in the performance of which duty each plant calculates the number of hours worked by its employees and forwards such calculations to the general offices of the Company where the pay checks are drawn and transmitted to the plant for distribution.

While ship repair employees are transferred for duty among the other plants of the Company, such transfers are of a temporary nature and for emergency purposes only. Employees so transferred

²The Field Examiner reported that the C. I. O. had submitted 93 authorization cards dated between August and September 1943, of which 83 bore the apparently genuine original signatures of persons whose names appear on the Company's pay roll of August 25, 1943, containing the names of 100 persons within the appropriate unit claimed by the C. I. O.

³The only exception to this statement concerns an employee by the name of Feehley, hereinafter discussed, whom the A. F. of L. claims should be excluded from the appropriate unit as a supervisory employee.

do only the type of work which they would normally do at the ship repair yard, such as the repair of mechanical and marine equipment used in connection with the Company's sand, gravel, and quarry operations.⁴ Moreover such transferees continue to work under the supervision of the ship repair superintendent. The record indicates that there have been no permanent transfers from the ship repair yard to the other operations of the Company, and that transfers from such other operations to the ship repair yard are negligible in quantity.

Notwithstanding the above facts, the Company and the A. F. of L. urge in favor of a State-wide multiple plant unit the fact that labor policies of the Company are centrally determined, together with the claim that the history of collective bargaining has been conducted upon a State-wide multiple plant basis.

As to the first contention, it appears that while the labor policy affecting all operations of the Company within the State of Maryland is centrally determined, the superintendent of the shipyard makes recommendations to the president of the Company with reference to the rate of pay and other working conditions in the shipyard.⁵ Employee grievances arising among the shipyard workers are settled where possible by the superintendent of the shipyard through personnel conferences with the individual employees concerned.⁶

With respect to the history of collective bargaining, the contract chiefly relied upon is a so-called master agreement executed on March 29, 1940, by the Company and the A. F. of L. The agreement provides that only members in good standing of the various local unions affiliated with the A. F. of L. union will be employed by the Company in all of the Company's operations and such other operations controlled by the Company that properly come within the jurisdiction of the A. F. of L. The agreement further provides that the Company shall enter into collective bargaining agreements with the various local unions affiliated with the A. F. of L. covering such of its employees as belong to the A. F. of L.'s affiliates.

While the contract does not specify the particular plant or plants or operations or geographical limits purported to be affected thereby, a witness for the A. F. of L. testified that the agreement was intended to apply to all the Company's operations in the state of Maryland.

⁴The repair work performed by the ship repair yard employees consists of repairs to plant equipment which cannot be made by the plant employees themselves.

⁵The Board has held that notwithstanding the existence of a central personnel office, a single plant unit may be appropriate where, among other circumstances, it appears that the plant managers consult with the central office and propose wage rates for their respective plants. See *Matter of John Deere Harvester Workers of Deere & Company*, 44 N. L. R. B. 335.

⁶The Board has considered as an element in the finding of a single plant unit the fact that grievances are handled locally by the plant foremen. See *Matter of Pacific Lumber Co.*, 51 N. L. R. B. 407; *Matter of May Pollack & Co.*, 38 N. L. R. B. 996

The contract is not, however, a collective bargaining agreement in the sense that it settles matters of wages, hours of work and other conditions of work, but merely binds the Company to bargain in the future with the A. F. of L.'s affiliates in respect to such matters. Moreover, the contract in question not only fails to cover by its terms the employees of the ship repair yard, but also contains no provision for termination.

The A. F. of L. contends that, notwithstanding the indefinite character of the master agreement, the fact that the A. F. of L., acting under the master agreement, has awarded jurisdiction to its affiliate, herein referred to as the Operating Engineers, for the purposes of bargaining collectively with respect to employees throughout the Company's sand and gravel operations, together with the employees in the ship repair yard, establishes a history of collective bargaining upon a multiple plant basis throughout the State of Maryland. However, while it appears that the Operating Engineers has, pursuant to the master agreement and in accordance with its grant of jurisdiction over the Company's employees, entered into contracts with the Company apparently covering employees within the craft of the Operating Engineers in sand and gravel plants throughout the State of Maryland,⁷ it is admitted by the A. F. of L. that the Operating Engineers has never made a contract in behalf of, or even organized, the ship repair yard employees. Moreover, the latter have concededly been neglected by the Operating Engineers and have never been organized by any labor organization other than the petitioning C. I. O. union.

Under the circumstances, we are of the opinion that neither the Company's centralized administration of labor policies, nor the history of collective bargaining, as hereinabove set forth, is determinative of the question of the appropriate unit. We find that, upon the entire record in the case, the employees of the ship repair yard constitute a homogeneous group suitable for the purposes of collective bargaining.⁸

There remains for consideration the question of including or excluding one Feehley from the appropriate unit. This employee is in charge of the ship repair yard from 4:30 to 12:30 at night, during which period he is assisted at times by as many as 5 or 6 employees who

⁷ The last contract dated August 25, 1942, is for a period of 1 year, or until such time as either party gives 30 days' more of change or termination. The contract fails to clearly identify the employees intended to be covered thereby. The only possibility of determining coverage rests in construction of the language appearing in the preamble and Article 1, Section 2, of the agreement. It would appear from this language that the contract affects "employees within the union's craft at these plants of the Company located within the State of Maryland engaged in the production of sand and gravel."

⁸ See *Matter of Pacific Lumber Company*, 51 N. L. R. B. 407.

work under his direction on repair jobs. He has, however, no authority either to make or to recommend changes in their employee status. Feehley is listed on the company pay roll as a machinist. As such, he does manual work and is paid by the hour like other production employees. While his rate per hour is 15 cents higher than that received by ordinary machinists, this rate includes 10 cents extra compensation for night work. By comparison, it appears that foremen are listed on the pay roll as foremen, are paid a straight weekly salary and do no manual work. Upon the entire record we find that Feehley has no substantial supervisory duties, but is merely a journeyman machinist, who at times directs and is assisted by helpers according to a custom long prevailing in the machinists' craft. We shall, accordingly, include Feehley within the unit hereinafter found appropriate for the purposes of collective bargaining.

We find that all production and maintenance employees of the Company employed at its Fairfield, Maryland, ship repair yard, including Feehley, truck drivers,⁹ and watchmen,¹⁰ but excluding foremen, assistant foremen, clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the act.

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.

While the A. F. of L. made no actual showing of representation among the ship repair yard employees, we shall, in view of its possible interest as indicated by the master agreement aforesaid, include its name on the ballot in the election directed among the employees of the Company.

⁹ While the C. I. O. originally requested the exclusion of these employees, it agreed with the A. F. of L. at the hearing that truck drivers should be included within the appropriate unit. In the absence of any claim for their separate representation, it is our usual practice to include truck drivers within a unit of production and maintenance employees. See *Matter of Carl G. Hedblom and Byron C. Hedblom, co-partners, d/b/a General Ship and Engine Works*, 49 N. L. R. B. 1290.

¹⁰ While watchmen were not specifically claimed by the petitioning union, it appears that these employees who are neither armed nor militarized do essentially maintenance work and are therefore included in a unit of production and maintenance employees in accordance with our usual practice in this respect. See *Matter of Pass and Seymour, Inc.*, 51 N. L. R. B. 1135.

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 The Arundel Corporation, Fairfield, Maryland, 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 Fifth 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 who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., Local 43, or by Baltimore Building and Construction Trades Council, A. F. of L., for the purposes of collective bargaining, or by neither.