

In the Matter of BETHLEHEM-HINGHAM SHIPYARD, INC. *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 4 AND ITS BRANCHES (A. F. OF L.)

In the Matter of BETHLEHEM-HINGHAM SHIPYARD, INC. *and* INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA, (C. I. O.)

Cases Nos. 1-R-1612 and 1-R-1651.—Decided January 15, 1944

Cravath, de Gersdorff, Swaine & Wood, by Messrs. *C. A. McLain* and *Rodney M. Nash*, of New York City, for the Company.

Mr. Cornelius J. Ryan, of Boston, Mass., for the Operating Engineers.

Grant & Angoff, by *Mr. Sidney S. Grant*, of Boston, Mass., for the C. I. O.

Mr. Robert A. Zottoli, of Quincy, Mass., for the Independent.

Mr. A. Herbert Barenboim, of Boston, Mass., for the Welders.

Mr. John Van Varenwyck, of Boston, Mass., for the A. F. of L.

Mr. William R. Cameron, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petitions severally filed by International Union of Operating Engineers, Local 4 and its Branches (A. F. of L.), herein called the Operating Engineers, and Industrial Union of Marine & Shipbuilding Workers of America (C. I. O.), herein called the C. I. O., alleging that questions affecting commerce had arisen concerning the representation of employees of Bethlehem-Hingham Shipyard, Inc., Hingham, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Robert E. Greene, Trial Examiner. Said hearing was held at Boston, Massachusetts, on December 7, 1943. The Company, the Operating Engineers, the C. I. O., Bethlehem-Hingham

Shipyards Independent Union, herein called the Independent, and United Electric Arc Welders of America, herein called the Welders, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the Company moved the dismissal of the petition of the Operating Engineers, and the Dismissal of the petition for intervention of the Welders. For reasons appearing hereinafter, the motion for dismissal of the petition of the Operating Engineers is hereby granted. The motion for dismissal of the intervening petition of the Welders is hereby denied.¹ 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. The Company requested oral argument. This request is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem-Hingham Shipyards, Inc., a Delaware corporation, operates a shipyard located at Hingham, Massachusetts, where it is engaged solely in the construction of vessels for the United States Navy Department. The shipyard and all shipbuilding facilities are owned by the United States Navy Department, and construction of vessels is under contracts providing for payment on the basis of cost plus a fee. During the period from February 1, 1942, until December 1, 1943, the aggregate value of all materials used by the Company was in excess of \$65,000,000, of which over 90 percent was delivered to the shipyard from points outside the Commonwealth of Massachusetts. All of these materials were used or are destined for use in the construction of such vessels. During the same period the aggregate of amounts billed by the Company to the United States Navy Department for work in the construction of such vessels at the shipyard was approximately \$146,700,000. The Company has stipulated to the foregoing facts solely for the purposes of the present proceeding. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local 4 and its Branches, is a labor organization affiliated with the American Federa-

¹ The separate craft unit sought by the Welders, like that sought by the Operating Engineers, is hereinafter found to be inappropriate. At the hearing, however, the Welders requested that its name appear on the ballot in the event an election should be directed only in the industrial unit. This request is hereby granted.

tion of Labor, admitting to membership employees of the Company.

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

Bethlehem-Hingham Shipyard Independent Union is an unaffiliated labor organization, admitting to membership employees of the Company.

United Electric Arc Welders of America is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company refuses to recognize either of the petitioners herein as the exclusive bargaining representative for the employees in the respective units which each claims to be appropriate.

Statements of the Regional Director introduced in evidence, and of the Trial Examiner read into the record, together with evidence adduced at the hearing, indicate that the Operating Engineers, the C. I. O., the Independent, and the Welders each represents a substantial number of employees in the unit which each contends is appropriate.²

We find that questions affecting commerce have 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 unit sought by the C. I. O. comprises all production, maintenance, and warehouse employees of Bethlehem-Hingham Shipyard, Inc., excluding (a) all executives, general office and clerical em-

² The Regional Director reported that the Operating Engineers submitted 103 application for membership cards, of which 95 bore apparently genuine, original signatures. Of the cards submitted, 52 were undated, 8 bore miscellaneous dates, and 43 were dated in 1943. A sample check of 20 cards revealed that 15 of the 20 checked against the Company's pay roll as of November 2, 1943, in the unit claimed by the Operating Engineers to be appropriate, consisting of 245 names.

The Regional Director further reported that the C. I. O. submitted 9,000 signed application for membership cards, dated between 1942 and 1943. A sample check was made of 100 cards, 65 of which checked against the Company's pay roll, and 35 did not. The pay roll in the unit claimed to be appropriate by the C. I. O. numbers 19,000.

The Regional Director further reported that the Independent submitted approximately 58,000 application for membership cards. A sample check was made of 100 cards which bore dates in 1943 and which were selected at random. Of these, 71 checked against the Company's pay roll, 3 were duplicates, and 26 were not found.

The Trial Examiner stated at the hearing that the Welders submitted approximately 1,500 cards. A sample check was made of 100 of these cards, and it was found that 72 bore apparently genuine, original signatures of persons whose names were on the Company's pay roll; 26 were not found, and 2 were duplicates. The pay roll used was of December 5, 1943, and bore approximately 3,559 names of welders employed by the Company. At the hearing evidence was adduced by the Welders which indicated that the cards submitted, though bearing no inscription other than name, date, address, shift and badge number, were nevertheless intended by the persons involved to constitute applications for membership in the Welders.

ployees; (b) all supervisory employees, including foremen, assistant foremen, quartermen, and leading men (not including working leaders who work with tools); (c) all plant-protection employees (including guards and fire fighters), and office janitors and janitresses; and (d) all first-aid employees, chauffeurs of company cars and drivers of beach wagons, timekeepers, piece-work counters, technical engineers, surveyors, transit men, material expeditors who are paid on a salary basis, draftsmen, rate setters, and time-study men.³ The Operating Engineers seeks a unit composed of all crane operators, excluding monorail operators. The Welders seeks a unit comprising all production and tack welders using the electric arc and gas methods of welding. The Independent is in substantial agreement with the unit proposed by the C. I. O., but would also include therein guards, fire fighters, timekeepers, piece-work counters and ship surveyors. The C. I. O., the Independent, and the Company are in agreement in their respective contentions that the appropriate unit is industrial in scope, and that the respective craft units herein sought are inappropriate for collective bargaining. We shall consider first the craft units proposed by the Operating Engineers and by the Welders, respectively.

The unit proposed by the Operating Engineers

The record discloses that there are approximately 289 crane operators employed by the Company, of whom 30 are female employees. There are considerably more than 100 cranes of various types throughout the shipyard. Some of these move on rails to various points. Others are gasoline driven and move on roadways. There are a number of bridge cranes located in the steel mill and elsewhere. The crane operators are dispersed throughout the yard; they have no centralized supervision but are subject to the supervision of the various departments in which they work. We have on several occasions found that such employees do not form a sufficiently skilled group to constitute a craft unit.⁴ In view of the circumstances disclosed in the record, we find that the crane operators are not such a skilled or homogeneous group, having common interests, as to constitute a separate unit appropriate for collective bargaining. We shall, therefore, dismiss the petition of the Operating Engineers.

³ This unit is identical with that found to be appropriate by the Board on April 16, 1943, in *Matter of Bethlehem-Hingham Shipyard, Inc.*, 48 N. L. R. B. 1297. The election therein directed did not result in selection of a bargaining representative. The C. I. O. and the Company contend that our determination of the unit in that proceeding, is conclusive of the present case. Although our finding as to the unit, hereinafter set forth, concurs with that in the former proceeding, we nevertheless find no merit in this contention. In the above-mentioned proceeding no labor organization was seeking a craft unit, and hence the question of craft versus industrial unit was not presented to the Board. See *Matter of Aluminum Co. of America*, 42 N. L. R. B. 772; *Matter of Bethlehem Steel Company (Shipbuilding Division)*, 40 N. L. R. B. 922; *Matter of Bethlehem Steel Company (Boston Yards)*, 39 N. L. R. B. 1230.

⁴ See *Matter of Douglas Aircraft Company, Inc.*, 54 N. L. R. B. 67; *Matter of Laclede Steel Company*, 49 N. L. R. B. 1116; *Matter of Sheffield Steel Corp. of Texas*, 43 N. L. R. B. 956.

The unit proposed by the Welders

The Company employs approximately 3,758 welders, of whom about 700 are women. The welders are employed through the Company's Department 39, and are then distributed to the various departments which require them. All welders formerly were under Department 39, but 4 or 5 months prior to the hearing, the tack welders working in the steel mill were transferred to that department, which is known as Department 31, and, in similar manner, the tack welders working with the shipfitters were transferred to Department 33. The welders, generally, work in a number of the Company's departments and are scattered throughout the yard. The record indicates that they are subject to hazards peculiar to the nature of their work, but does not show that such hazards are greater than those of other occupations in the shipyard. It requires but a comparatively small amount of training to become a tack welder. Although the record is not specific as to the amount of training necessary to advance to production welding, it is not indicated that it is greater than that required for many other operations in the shipyard.

There has been no previous history of collective bargaining at the Company's shipyard; however, at none of the major New England shipyards⁵ has the welders been found to constitute a separate unit. While we have on several occasions found that welders constituted a clearly definable group because of physical segregation from other employees, or separate centralized supervision, or because they were engaged in operations requiring a high degree of specialized skill, or for other reasons indicating that they were a homogeneous group possessing common interests, we are of the opinion that under all the circumstances disclosed by the record herein, and in view of the general history of collective bargaining in New England shipyards, the unit proposed by the Welders is inappropriate for the purposes of collective bargaining.⁶

Classifications whose inclusion within the industrial unit is contested

Guards: Among the classifications which the Independent would include within the industrial unit, but whom the C. I. O. and the Company would exclude, are the guards. The record discloses that these employees have, in connection with their duties of plant protection, become members of the United States Coast Guard Auxiliary.

⁵ The shipyards concerning which evidence was introduced at the hearing are the following: New England Shipbuilding Corporation, Portland, Maine; Bath Iron Works, Bath, Maine; Electric Boat Company, New London, Connecticut; Fore River Shipyard, Quincy, Massachusetts; and Walsh-Kaiser Shipyards, Providence, Rhode Island. Cf. *Matter of The United Boat Service Corporation*, 53 N. L. R. B. 992.

⁶ See *Matter of Bethlehem-Alameda Shipyard, Inc.*, 53 N. L. R. B. 999.

We shall, therefore, in accordance with our usual practice, exclude them.⁷

Fire fighters: These employees are likewise members of the plant-protection department, but, unlike the guards, are not militarized. They perform the duties usual to such employees. Inasmuch as the nature of their duties is dissimilar to that of production and maintenance employees, and they do not possess interests sufficiently in common with those of the employees in the unit hereinafter found appropriate, we shall exclude them.⁸

Timekeepers and piece-work counters: These two classifications of employees perform similar functions in that they collect data consisting of time or production records of employees, for the time-keeping department, which is used by the pay-roll department in the computation of wages. Although they are not considered to be "white collar" employees because they are required to go into all parts of the plant, their duties are largely of a clerical nature. In accordance with our usual practice, we shall exclude the timekeepers and piece-work counters.⁹

Ship surveyors: The employees in this classification, by use of surveying instruments, lay out certain lines of the ship. They are required to have engineering education and experience, knowledge of ships' lines and mathematics, and familiarity with the instruments used by a civil engineer. Since their training and employment is of a technical or professional nature, their duties and interests are considerably different from those of the production and maintenance employees. We shall exclude the ship surveyors.

We find that all production, maintenance, and warehouse employees of the Company, excluding: (a) all executives, general office and clerical employees; (b) all supervisory employees, including foremen, assistant foremen, quartermen and leading men (not including working leaders who work with tools); (c) all plant-protection employees (including guards and fire fighters), and office janitors and janitresses; and (d) all first-aid employees, chauffeurs of company cars and drivers of beach wagons, timekeepers, piece-work counters, technical engineers, surveyors, transit men, material expeditors who are paid on a salary basis, draftsmen, rate setters, time-study men, and all other 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.

⁷ See *Matter of Pressed Steel Car Company, Inc.*, 46 N. L. R. B. 262; *Matter of Globe Forge & Foundries, Inc.*, 46 N. L. R. B. 1323.

⁸ See *Matter of Todd-Bath Iron Shipbuilding Corporation*, 45 N. L. R. B. 1367.

⁹ See *Matter of Bendix Aviation Corporation, (Philadelphia Division)*, 53 N. L. R. B. 864; *Matter of Julius Peterson*, 46 N. L. R. B. 1049.

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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Bethlehem-Hingham Shipyard, Inc., Hingham, Massachusetts, 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 First 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 any 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 & Shipbuilding Workers of America, affiliated with the Congress of Industrial Organizations, by Bethlehem-Hingham Shipyard Independent Union, or by United Electric Arc Welders of America, for the purposes of collective bargaining, or by none.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Bethlehem-Hingham Shipyard, Inc., Hingham, Massachusetts, filed by International Union of Operating Engineers, Local 4 and its Branches (A. F. of L.) be, and it hereby is, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision, Direction of Election and Order.