

In the Matter of ANN HARSTEIN AND FRED HARSTEIN, COPARTNERS,
D/B/A WELDMASTER COMPANY and UNITED BROTHERHOOD OF WELDORS,
CUTTERS AND HELPERS OF AMERICA, LOCAL #22

Case No. 2-R-4287.—Decided February 12, 1944

Mr. Isidore Paley, of New York City and *Mr. M. P. Cook*, of Brooklyn, N. Y., for the Company.

Mr. Henry Mayer, by *Mr. Howard P. Feinberg*, of New York City and *Mr. S. T. Gordon*, of Brooklyn, N. Y., for the Union.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Ann Harstein and Fred Harstein, Copartners, doing business as Weldmaster Company, Brooklyn, New York, 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 New York City on January 18, 1944. 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 an 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

Ann Harstein and Fred Harstein, Copartners, doing business as Weldmaster Company have their principal place of business in Brook-

¹ Incorrectly described in the petition and other formal papers as Fred Harstein d/b/a Weldmaster Company and corrected by stipulation at the hearing.

lyn, New York, where they are engaged as subcontractors in the business of welding. During the last 12 months preceding the date of the hearing, the Company sold welding services valued at approximately \$1,000,000, all of which services were performed for numerous ship-building and repair concerns operating under war contracts with the Army, Navy, and Maritime Commission of the United States.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, is a labor organization admitting to membership employees of Company.²

III. THE QUESTION CONCERNING REPRESENTATION

On November 23, 1943, the Union and Company conferred with the object of reaching an agreement for a consent election. The Company, however, declined to execute a consent election agreement because it doubted the status of the Union as a labor organization. At the hearing, the Union renewed its request for collective bargaining, which request was refused by the Company.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

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

We find, in accordance with an agreement of the parties, that all welders employed by the Company, excluding snappers⁴ and super-

² The Company contends that the local is not a labor organization, partly upon the ground that the local's charter was not offered in evidence at the hearing. However, the record discloses that the local exists and functions as an organization for the purpose of negotiating on behalf of employees, contracts with employers relative to wages, hours, and other conditions of employment. In addition thereto, we take official notice of the fact that the local here involved has been found in other proceedings before the Board to be a labor organization within the meaning of the National Labor Relations Act (see *Matter of The United Boat Service Corporation*, 53 N. L. R. B. 992). The contention of the Company is accordingly rejected as being without merit.

³ The Regional Director reported that the Union had submitted 79 authorization cards, of which 55 dated between September 1942 and November 1943 with 1 undated, bore the apparently genuine, original signatures of persons whose names appear on the Company's pay roll of November 8, 1943, containing 114 names within the claimed appropriate unit.

⁴ The evidence reveals that snappers exercise supervisory powers within our customary definition.

visory 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.

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 Ann Harstein and Fred Harstein, Copartners, doing business as Weldmaster Company, Brooklyn, New York, 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 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 or not they desire to be represented by United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, for the purposes of collective bargaining.