

IN THE MATTER OF BETHLEHEM STEEL COMPANY, SHIPBUILDING DIVISION,
56TH STREET YARD and INDUSTRIAL UNION OF MARINE & SHIPBUILDING
WORKERS OF AMERICA, LOCAL 13, CIO

Case No. 2-R-4464.—Decided March 8, 1944

Mr. E. E. Kirwan, of New York City, and *Messrs. Mortimer W. Meade* and *Francis F. Hanigan*, of Brooklyn, N. Y., for the Company.

Mr. I. C. Velson, of Brooklyn, N. Y., and *Mr. William Phillips*, of Jamaica, N. Y., for the Union.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Industrial Union of Marine & Shipbuilding Workers of America, Local 13, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company, Shipbuilding Division, 56th Street Yard, Brooklyn, New York, herein called the Company, 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 28, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bethlehem Steel Company is a Pennsylvania corporation having offices for its shipbuilding division at No. 25 Broadway, New York City. The shipbuilding division of the Company is engaged at its

shipyard located at 56th Street and First Avenue, Brooklyn, New York, in the repair, alteration, and conversion of ships. During the calendar year 1943, the approximate value of all materials used by the Company in such work at its 56th Street 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 York. During the same year, the aggregate amount billed by the Company for such work at the 56th Street Yard was in excess of \$1,000,000, of which more than 90 percent was with respect to work on ships which were destined for use in interstate and foreign commerce or for the United States Government. The Company admits and we find that at its 56th Street Yard 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 13, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

At the hearing the parties stipulated that on or about November 29, 1943, the Union requested the Company to recognize it as the exclusive bargaining representative of the employees within an alleged appropriate unit and that the Company refused to accord the Union such recognition unless and until it is certified by the Board.

A statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees within the unit hereinafter found to be 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 inspectors in the Fire Department of the Company's 56th Street Yard, excluding the fire chief, captains, lieutenants, and any other supervisory employees within our customary definition, constitute an appropriate bargaining unit. In denying

¹The Field Examiner reported that the Union submitted 9 authorization cards bearing apparently genuine original signatures of persons whose names appear on the Company's pay roll of January 1, 1944, which contains the names of 10 employees within the alleged appropriate unit.

the appropriateness of such a unit, the Company takes the position that the fire inspectors function as representatives of management and therefore are not employees within the meaning of the Act.

The Company's fire department is comprised of a fire chief, 3 captains, 3 lieutenants, 8 fire inspectors, and approximately 275 fire watchmen. The department is under the general supervision of the fire chief. A captain is directly in charge of each of the 3 shifts, and the lieutenants are immediately below the captains in authority.

Upon the arrival of a ship which is to be repaired, a lieutenant or a fire inspector is assigned the task of inspecting it for fire hazards. The lieutenant or inspector is provided with a special chart of the ship on which he indicates the areas containing combustible materials. When repair work is begun, fire watchmen are stationed by the fire inspectors at the areas designated on the chart. The watchmen then work on board the ship in conjunction with the various production groups engaged in repairing it. In addition to these functions, the fire inspectors, eight of whom were employed by the Company at the 56th Street Yard at the time of the hearing, patrol areas to which they are assigned for the purpose of discovering and eliminating fire hazards. In the event of a fire, they assist in extinguishing it with the aid of hose lines, water and fire extinguishers. Another function they perform is the inspection of fire fighting equipment in order to insure its fitness.

At the date of the hearing the fire department employed 12 temporary fire inspectors in addition to the 8 regular fire inspectors. These employees were promoted from the position of fire watchman to their present classification in order to augment the group of fire inspectors while the yard is operating at peak-load. In the event that the work load is reduced the complement of temporary fire inspectors will similarly be reduced and thus some of these employees will return to their former positions as fire watchmen.² However, while acting as temporary fire inspectors they exercise authority similar to that possessed by the fire inspectors.

The preponderance of evidence indicates that fire inspectors have no direct authority to discharge or discipline the fire watchmen, their authority being limited to the right to report neglect or derelictions on the part of the fire watchmen to the captain in charge of their particular shift. The captain alone has the authority to discipline the fire watchmen or to recommend them for promotion or demotion.³

Although the Company contends that fire inspectors are supervisory employees because they are authorized to stop welders and burners

² Both fire watchmen and temporary fire inspectors are part of the industrial bargaining unit covered by a current contract between the Company and the Union.

³ The parties are in agreement with respect to the exclusion of the fire chief, captains, and lieutenants from the unit.

who may be working under conditions which the fire inspectors deem to be unsafe, it is apparent that such action is merely taken in the interests of safety. Moreover, the employees ordered to stop work lose no time or pay and no material change in their status is effected. We consequently find no merit in the Company's contention.

In a prior representation case involving another of its shipyards, the Company made the same contentions. In that case we found that fire inspectors were "employees within the meaning of the Act" and constituted a unit appropriate for the purposes of collective bargaining.⁴ Accordingly, in view of all the foregoing facts, we find that all fire inspectors employed in the Fire Department of the Company's 56th Street Yard, excluding the fire chief, captains, lieutenants, and any 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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.⁵

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 Steel Company, Shipbuilding Division, 56th Street Yard, 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

⁴ See *Matter of Bethlehem Steel Company, Staten Island Yard*, 50 N. L. R. B. 790.

⁵ At the hearing the Union requested that its name appear on the ballot as hereinafter set forth in the Direction of Election.

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 Local 13, Industrial Union of Marine & Shipbuilding Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.