

In the Matter of GIBBS GAS ENGINE COMPANY *and* INDUSTRIAL UNION
OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, CIO

Case No. 10-R-996.—Decided March 14, 1944

Mr. John W. Donahoo, of Jacksonville, Fla., for the Company.

Messrs. Charles M. Smolikoff, Edward C. Holman, and Duggan Boartfeld, of Jacksonville, Fla., for the C. I. O.

Mr. D. W. Millan, of Jacksonville, Fla., for the A. F. of L.

Messrs. James R. McKinley, William D. Rodgers, and Elliott Adams, of Jacksonville, Fla., for the Association.

Miss S. Catherine Wilson, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Union of Marine and Shipbuilding Workers of America, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Gibbs Gas Engine Company, Jacksonville, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Jacksonville, Florida, on January 14, 1944. At the hearing the Trial Examiner granted a motion of the Jacksonville Metal Trades Council, affiliated with the American Federation of Labor, herein called the A. F. of L., to intervene. The Company, the C. I. O., the A. F. of L., and the Shipworkers' Association, South Jacksonville Chapter No. 1, herein called the Association, appeared and participated. The Company and the Association moved to dismiss the petition, and the Trial Examiner referred the motions to the Board. For reasons set forth hereinafter, the motions are hereby denied. All parties 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

Gibbs Gas Engine Company, a Florida corporation maintaining its principal place of business at Jacksonville, Florida, is engaged in the construction and repair of ships. Over 95 percent of its work is performed for the United States Government. During the year 1943, more than 60 percent of the company's purchases, consisting of steel, lumber, hardware, and other materials, was shipped from outside the State of Florida. During the same period, its gross receipts exceeded \$200,000.

The Company admits 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, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Jacksonville Metal Trades Council, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Shipworkers Association, South Jacksonville Chapter No. 1, is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On November 5, 1942, pursuant to a Board-directed election,¹ the Association was certified as exclusive bargaining representative of the Company's employees, and on December 26, 1942, the Company entered into a maintenance-of-membership contract with the Association. The contract provided that it should be in effect for a period of 1 year, and should continue thereafter unless either party should give 30 days' written notice for the purpose of negotiating a revision of the contract. During August 1943, the C. I. O. requested recognition by a letter addressed to the Company and the Association. The Company refused to grant recognition because of the existing contract, and on September 7, 1943, the C. I. O. filed a petition for investigation and certification of representatives. On October 22, 1943, the Company and the

¹ 42 N. L. R. B. 272.

Association entered into a second agreement effective from that date for a period of 1 year, automatically renewable thereafter upon the same conditions as those contained in the instrument executed December 26, 1942. The terms of the second agreement differ from those of the first in that they embody wage rates approved by the War Labor Board on March 22, 1943, and add provisions regarding employees excused for union business, sick leave, and compensation for injury.

The Company and the Association assert that their contract constitutes a bar to a present determination of representatives. However, prior to the execution of the contract of October 22, 1943, which superseded the contract of December 26, 1942, the Company and the Association had notice of the C. I. O.'s claim to recognition. In view of this timely notice, the contract of October 22, 1943, cannot operate as a bar to this proceeding.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial 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. and the A. F. of L. agree that the appropriate unit should embrace all production and maintenance workers, including stock and material clerks, and truck drivers, but excluding office, clerical, and technical employees, guards and watchmen, foremen, subforemen, and employees who have the right to recommend hire and discharge. The Company and the Association contend that guards should be included in the unit.

The Company presently employs about 43 guards. As members of the Coast Guard Reserve, they are armed and wear arm bands reading "Coast Guard Police." The Company and the Association in support of their request for the inclusion of guards in the appropriate unit, point to the inclusion of such employees in their bar-

² The Field Examiner reported that the C. I. O. submitted 614 application cards which bore apparently genuine original signatures; that the names of 491 persons appearing on the cards were listed on the Company's pay roll of December 4, 1943, which contained the names of 1,996 employees in the appropriate unit; and that the cards were dated during 1943 with the exception of 7 which were undated. He also reported that the A. F. of L. submitted 244 designation cards which bore apparently genuine original signatures; that the names of 172 persons appearing on the cards were contained in the aforesaid pay roll; and that the cards were dated during 1943, with the exception of 66 which were undated.

The Company contends that the C. I. O. has not made a sufficient showing to warrant the conduct of an election at this time. In view of the maintenance-of-membership clause in the contract between the Company and the Association, however, we are of the opinion that the C. I. O. has made a substantial showing of representation. See *Matter of Champion Machine & Forging Co.*, 53 N. L. R. B. 934.

gaining contracts. While bargaining history is a factor to be considered in determining whether or not a unit is appropriate, it is not necessarily controlling. Therefore, in accordance with our usual practice of excluding such employees from production and maintenance units, we shall exclude the militarized guards from the unit hereinafter found appropriate.³

We find that all production and maintenance employees of the Company, including stock and materials clerks, and truck drivers, but excluding guards and watchmen, office, clerical, and technical 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.⁴

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 payroll period immediately preceding the date of the Direction of Election herein,⁵ subject to the limitations and additions set forth in the Direction.

The Company moved to dismiss the intervention of the A. F. of L., on the ground that it had not made a substantial showing. While the showing of the A. F. of L. alone might not support a petition, inasmuch as an election is to be conducted and it has made some showing of present representation, we shall permit the A. F. of L. to participate in the election hereinafter directed.

The C. I. O. requests that its name appear on the ballot as C. I. O.; the A. F. of L., that its name appear as The Jacksonville Metal Trades Council, A. F. of L.; and the Association, that its name appear as Shipworkers' Association. The requests are hereby granted.

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

³ See *Matter of Sprague Specialties Co*, 55 N. L. R. B. 47.

⁴ This unit corresponds in substance to that found appropriate in the prior decision involving the Company. *Matter of Gibbs Gas Engine Company*, 42 N. L. R. B. 272.

⁵ While the parties agreed that eligibility should be determined by the pay roll of January 14, 1944, no reason appears for departing from our usual practice in this regard.

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Gibbs Gas Engine Company, Jacksonville, Florida, 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 Tenth 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 employees 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, affiliated with the Congress of Industrial Organizations, or by The Jacksonville Metal Trades Council, affiliated with the American Federation of Labor, or by Shipworkers' Association, South Jacksonville Chapter No. 1, for the purposes of collective bargaining, or by none.

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