

In the Matter of FEDERAL SHIPBUILDING AND DRYDOCK COMPANY and MARINE DRAFTSMEN'S ASSOCIATION AT FEDERAL SHIPBUILDING AND DRYDOCK COMPANY, AFFILIATED WITH THE NATIONAL COUNCIL OF MARINE DRAFTSMEN, INC.

Case No. 2-R-4399.—Decided March 20, 1944

Mr. L. L. Lewis, of Pittsburgh, Pa., and *Mr. J. H. Love*, of Kearny, N. J., for the Company.

Boudin, Cohen, and Glickstein, by *Mr. Sidney Elliott Cohen*, and *Mr. Anthony Zeller*, both of New York City, for the Union.

Mr. Max M. Goldman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Marine Draftsmen's Association at Federal Shipbuilding and Drydock Company, affiliated with the National Council of Marine Draftsmen, Inc., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Federal Shipbuilding and Drydock Company, Kearny, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John J. Cuneo, Trial Examiner. Said hearing was held at Jersey City, New Jersey, on January 13, 1944. The Company and the Union appeared and participated. 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. The Board has considered the Union's request for oral argument and it is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Federal Shipbuilding and Drydock Company, a New Jersey corporation maintaining its principal place of business at Kearny, New Jersey, N. L. R. B., No. 111.

Jersey, is engaged in the construction of naval and merchant ships. It also maintains offices, plants, and warehouses in other parts of New Jersey. In the manufacture of its products the principal materials used are steel plates, boilers, turbines, and generators. In 1943 the Company's purchases of these materials exceeded \$1,000,000 in value, approximately 70 percent of which was shipped to it from points outside the State of New Jersey. During the same period, its finished products exceeded \$1,000,000 in value, approximately 90 percent of which was shipped by it to points outside the State of New Jersey. Almost all of the Company's production facilities are devoted to the war effort.

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

II. THE ORGANIZATION INVOLVED

Marine Draftsmen's Association at Federal Shipbuilding and Drydock Company, affiliated with the National Council of Marine Draftsmen, Inc., is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its draftsmen and drafting room technicians until it has been certified by the Board in an appropriate unit.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 parties are generally agreed that the Company's draftsmen and drafting room technicians, excluding clerical and supervisory employees, constitute an appropriate unit. They are in disagreement, however, concerning chargemen and checkers. The Company contends that these classifications of employees should be excluded from the unit, and the Union urges that they be included.

¹ The Regional Director reported that the Union submitted 125 application cards, which bore apparently genuine original signatures; that the names of all persons appearing on the cards were listed on the Company's pay roll of December 18, 1943, which contained the names of 174 employees in the appropriate unit; and that the cards were dated as follows: 3 in 1939, 12 in 1940, 14 in 1941, 29 in 1942, 65 in 1943, and 2 were undated.

The chargemen supervise and are responsible for the preparation and development of detailed working drawings or designs for ships and their machinery installations. Each has complete technical supervision of the draftsmen and drafting room technicians in his section. Their functions, among others, are to assign work to the draftsmen, to advise and assist the draftsmen in their work, and to criticize and pass upon the completed drawings. In addition, they are authorized to make recommendations regarding promotions, transfers, and discharges of draftsmen and drafting room technicians, and they are charged with the duty of enforcing certain of the Company's rules. Like their immediate superior, the assistant chief draftsman, they are paid on a salary basis, while their subordinates are paid on an hourly basis. From these facts it is apparent that chargemen are supervisory employees.

The Union contends that the history of collective bargaining in the industry and with the Company reveals that chargemen have been traditionally included as part of a unit of draftsmen and drafting room technicians. Consequently, it argues, chargemen should be included in the appropriate unit. While there is evidence that the Company dealt with the Union as the representative of its members among the Company's employees, chargemen included, these dealings were originally commenced as recently as 1938. Documentary evidence, in the form of written contracts, was introduced in evidence by the Union for the purpose of proving the alleged traditional practice of including chargemen in draftsmen's units in the shipbuilding industry. The oldest contract, however, is dated September 1, 1942. Moreover, there is no specific evidence that chargemen engaged by other employers in the industry possess supervisory authority. We shall exclude the Company's chargemen from the unit.²

The principal duties of the checkers consist of examining completed plans prepared by the draftsmen and drafting room technicians. They perform no supervisory functions, although they occasionally assume the chargemen's duties in their absence. They are hourly paid like the draftsmen and drafting room technicians, and have the same general working conditions as these employees. We find that they do not fall within our customary definition of supervisory employees, and that they have interests similar to those of the draftsmen and drafting room technicians. Accordingly, we shall include the checkers.

We find that all the Company's draftsmen and drafting room technicians, including checkers, but excluding clerical employees, charge-

² See *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733; Cf. *Matter of W. F. Hall Printing Company*, 51 N. L. R. B. 640, and cases cited therein; *Matter of Proximity Manufacturing Company*, 54 N. L. R. B. 1179

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.

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 Federal Shipbuilding and Drydock Company Kearny, New Jersey, 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 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 or not they desire to be represented by Marine Draftsmen's Association at Federal Shipbuilding and Drydock Company, affiliated with the National Council of Marine Draftsmen, Inc., for the purposes of collective bargaining.

[See *infra*, 55 N. L. R. B. 1438 for Supplemental Decision and Amendment to Decision and Direction of Election.]