In the Matter of THE UNITED BOAT SERVICE CORPORATION *and* UNITED BROTHERHOOD OF WELDORS, CUTTERS AND HELPERS OF AMERICA, LOCAL #22, C. U. A. (IND.)

In the Matter of THE UNITED BOAT SERVICE CORPORATION *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL #38, C. I. O.

In the Matter of THE UNITED BOAT SERVICE CORPORATION *and* BROTHERHOOD OF PAINTERS, A. F. OF L. DISTRICT COUNCIL 9

In the Matter of THE UNITED BOAT SERVICE CORPORATION *and* UNITED ASSOCIATION PLUMBERS AND PIPEFITTERS, LOCAL UNION #2, A. F. OF L.

In the Matter of THE UNITED BOAT SERVICE CORPORATION *and* NEW YORK CITY DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. OF L.

In the Matter of THE UNITED BOAT SERVICE CORPORATION *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. OF L.

Cases Nos. 2–R–3989 (R–5486), 2–R–4124, 2–R–4446, 2–R–4449, 2–R–4459, and 2–R–4498 respectively

SUPPLEMENTAL DECISION

ORDER

AND

AMENDMENT TO DIRECTION OF ELECTIONS

March 22, 1944

Upon a petition duly filed in Case No. 2–R–3989 (R–5486), by United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, C. U. A. (Ind.), herein called the Weldors, alleging that a question affecting commerce had arisen concerning the representation of certain employees of The United Boat Service Corporation, City Island, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jack Davis, Trial Examiner. Said hearing was held at New York City on June 2, 1943. The Company and the Weldors appeared and

participated. Thereafter, on July 7, 1943, while the petition of the Weldors was still pending before the Board, Industrial Union of Marine and Shipbuilding Workers of America, Local #38, herein called the C. I. O., filed a petition for investigation and certification of representatives in Case No. 2–R–4124, alleging that a question affecting commerce had arisen concerning the representation of all production and maintenance employees of the Company, including the employee categories claimed by the Weldors. Thereafter, on August 5, 1943, the Board issued an order reopening the record, remanding the proceedings to the Regional Director, and authorizing the Regional Director to issue notice of further hearing. Said further hearing was held upon due notice at New York City on August 31, 1943, before the same Trial Examiner who presided at the earlier hearing. The Company, the Weldors, and the C. I. O. appeared and participated. Thereafter, on November 30, 1943 the Board issued its Decision and Direction of Elections[1] herein, directing that separate elections be conducted (1) among the Company's welding employees with the Weldors and the C. I. O. on the ballot, and (2) among the remaining production and maintenance employees with the C. I. O. alone on the ballot. In December 1943, Brotherhood of Painters, A. F. of L., District Council 9, herein called the Painters, United Association Plumbers and Pipefitters, A. F. of L., Local Union #2, herein called the Plumbers, and New York City District Council, United Brotherhood of Carpenters and Joiners of America, A. F. of L., herein called the Carpenters, each advised the Regional Director of its interest in representing certain employees of the Company. On January 8, 1944, the Board ordered that the elections be stayed and that the record be reopened for the purpose of receiving evidence on the claims of the Painters, the Plumbers, and the Carpenters. In the interim, each of the last three labor organizations filed petitions with the Board by which it sought an investigation of representatives for the employees in the unit it claimed appropriate. On January 19, 1944, International Brotherhood of Electrical Workers, A. F. of L., herein called the I. B. E. W., filed its petition with the Board seeking an investigation of representatives for the electrical workers in the employ of the Company, and was permitted to intervene at the hearing. Since the position of the four A. F. of L. unions is essentially that of intervenors in Case No. 2–R–4124, these unions are frequently referred to herein as intervenors. On January 28, 1944, a further hearing was held herein at New York City, before the same Trial Examiner who presided at the earlier hearings. The Company, the Weldors, the C. I. O., the Painters, the Plumbers, the Carpenters, and the I. B. E. W. appeared, participated, and were afforded full opportunity to

[1] 53 N. L. R. B. 992.

be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the further hearing are free from prejudicial error and are hereby affirmed. During the hearing, the C. I. O. requested a hearing before the Board for the purpose of oral argument. In view of the exhaustive record herein and the briefs filed by the parties, the request is hereby denied. All parties were afforded opportunity to file briefs with the Board.

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

Findings of Fact

In our original Decision herein, after two hearings, we determined, in effect, that the industrial unit advocated by the C. I. O. is an appropriate unit for the purposes of collective bargaining on behalf of the Company's employees. We reserved decision, pending the outcome of the elections heretofore directed, of the question whether the employees claimed by the Weldors should be included in that industrial unit, or should constitute a separate unit for bargaining purposes. The Painters, Carpenters, Plumbers, and I. B. E. W. now request that we reconsider the foregoing determination and alter it by finding that the craft groups in which they are interested must be excluded, at least tentatively, from the unit for which the C. I. O. contends.

The representations made to the Board subsequent to the issuance of the Decision and Direction of Elections herein indicated that the Painters, the Plumbers, and the Carpenters severally represented a substantial number of the Company's employees in craft units alleged by these unions to be appropriate for bargaining, and that the interests thereby established antedated the hearing herein of August 31, 1943, on the C. I. O. petition in Case No. 2–R–4124. If this were so, clearly the Board was remiss in failing to give notice to these unions of that hearing, and the petitions of the Painters, Plumbers, and Carpenters, even though belated, should now be given consideration. In reliance upon the representations of interest referred to above, the Board reopened the record for the purpose of entertaining the contentions of the Painters, Plumbers, and Carpenters. The I. B. E. W. was permitted to intervene at the hearing.

During the hearing of January 28, 1944, a representative of the Plumbers testified that he first started to organize the Company's plumbers and pipe fitters in December 1943, later testifying, vaguely, that members of the Plumbers local union had engaged in organizational work among the Company's plumbers and pipe fitters at an earlier date.

The Painters' representative testified that he was aware that painters were employed by the Company in the summer of 1943, and visited the yard in that season to observe working conditions. He was, however, "not interested" in securing recognition from the Company until December 1943, when he was informed that another union, the C. I. O., was claiming to represent the painters.

The Carpenters had members among the Company's employees as early as May 1943. However, it introduced no evidence at the hearing to show affirmatively that it represented employees in the unit it proposes at the time of the hearing on the C. I. O. petition.

The situation of the I. B. E. W. differs in some respects from that of the other three A. F. of L. Unions. It made no offer to show membership among the Company's electricians until its membership drive of December 1943 and January 1944. None of the intervening unions requested recognition of the Company until January 19, 1944.

We find that none of the intervening A. F. of L. Unions has proved that it had such an active representative interest in employees of the Company in the unit it proposes at the time of the hearing on the C. I. O. petition,[2] as to be entitled to notice thereof. It is true that counsel for all the intervenors claim that their members were employed by the Company during that period, but, in the light of the testimony of representatives of the intervenors, the evidence of membership submitted demonstrates that they did not engage in active organization until after the issuance of our Decision and Direction of Elections herein. We are mindful that merely to recruit and retain members is not the sole function of a labor organization. Indeed, that is generally only the first step toward representation. Were we to concede that on August 31, 1943, at the time of the hearing on the C. I. O. petition, all painters, all plumbers, all carpenters, and all electricians in the employ of the Company were members, respectively, of the intervening A. F. of L. unions which now claim to represent them, that fact alone would not have entitled the several unions to notice of the August hearing in these proceedings. Only labor organizations which exhibit an active interest in representing employees affected by a representation proceedings are entitled to notice of the

[2] The membership cards or dues records submitted by the intervenors indicate the following:

Labor organization	Authorizations dated before December 1943	Employees in units on August 24, 1943	Authorizations in December 1943 or later	Employees in units on 11/30/43
Painters	0	22	17	36
Plumbers	0	31	26	31
Carpenters	*6	19	16	25
I. B. E. W.	0	15	9	25

*Four dated in May and one each in October and November 1943. The employees whose names appear on two of the cards dated in May were not listed on the November 30 pay roll.

hearing therein. Even those which seek to intervene on their own initiative, at or prior to the hearing, must manifest a desire to engage in collective bargaining on behalf of the employees in whom they assert an interest.[3] Thus, in a case decided as long ago as 1938, the Board dismissed the petition of a labor organization seeking certification as bargaining representative of a group of employees when an official of the organization conceded that it did not presently contemplate the initiation of bargaining relations with the employer, but wished only to be in a position to do so if conditions arose making such action desirable.[4] Of course, we do not imply that this analogy is applicable to the intervening unions here, and we agree that they now, as for many years, represent their members in matters of collective bargaining. We reiterate, however, that on August 31, 1943, at the time of the further hearing on the C. I. O. petition, neither the Painters, the Plumbers, the Carpenters, nor the I. B. E. W. were actively seeking to represent whatever members they may have had at the yard in collective bargaining with the Company. Since this is so, we are of the opinion that they were not aggrieved by our failure to serve them with notice of that hearing.

Our basic policy with respect to the time when labor organizations will be permitted to intervene in representation proceedings was stated in the *American Woolen Company* case,[5] where the Board held:

> Expeditious investigation and certification of representatives is essential to the proper administration of the Act. Sound administrative policy requires, therefore, that parties claiming the right of representation submit *prima facie* proof upon which they rely either to the Regional Director prior to the hearing or to the Trial Examiner at the time of the hearing. Hereafter in all proceedings not now pending before the Board where full opportunity has been afforded for the timely presentation of such *prima facie* proof, we shall reject offers of proof of representation made after the close of hearings.

Since the decision in that case we have concluded that the privilege of intervening in a representation proceeding after the close of the hearing should be extended to organizations which establish that, as of the time of the hearing, they had such a representative interest in

[3] Normally, of course, the requisite desire on the part of a labor organization to bargain collectively on behalf of the employees in the unit it claims to be appropriate is sufficiently manifested by its motion to intervene Whether or not such an intervenor makes a showing of interest, by way of membership, designation as bargaining agent, or otherwise, sufficient to give weight to its unit contentions or to entitle it to a place on the ballot in an election among the employees involved, is a question to be determined by the circumstances of the case and is not of concern here See *Matter of Douglas Aircraft Company, Inc.*, 53 N L R B 486; *Matter of The B F Goodrich Rubber Company*, 55 N L R B 338

[4] See *Matter of J. & A Young, Inc.*, 9 N L R B 1164.

[5] *Matter of American Woolen Company*, 32 N L R B 1, 8

employees affected by the investigation as to have been entitled to notice thereof. We are also of the opinion that it is desirable in certain circumstances to reopen the record and permit a labor organization to intervene in a case where the Board has not, as yet, rendered its decision, especially where, owing to the limited extent of organization among the employees affected by the proceedings as of the time of the first hearing, the Board doubts the propriety of directing an election on the basis of the record made at that hearing.[6] Subject to those qualifications, we are still persuaded that the policy and the reasons therefor set forth in the *American Woolen* decision are sound.

For the foregoing reasons, we have concluded that we were misled in reopening the case herein to consider the contentions of the four intervenors, since the hearing has revealed that none of the intervenors had a substantial interest at the time of the hearing of August 31. Accordingly, we are hereby vacating our order permitting the intervention of the Painters, Plumbers, and Carpenters, reversing the action of the Regional Director in permitting the intervention of the I. B. E. W., and dismissing the petitions filed by the said unions.

It may be argued, of course, that the long delay [7] which has occurred cannot now be avoided, and inasmuch as an election is to be conducted no further delay would result from placing the A. F. of L. unions on the ballots in the units they seek. We grant the plausibility of such a contention, but deem it outweighed by the importance of restating a principle uniformly applicable to all unions in representation proceedings.[8]

ORDER

In view of the foregoing findings and conclusions, and upon the entire record in the case, the National Labor Relations Board hereby orders that the permission to intervene heretofore granted to Brotherhood of Painters, A. F. of L., District Council 9; United Association of Plumbers and Pipefitters, A. F. of L., Local Union #2; New York City District Council, United Brotherhood of Carpenters and Joiners of America, A. F. of L.; and International Brotherhood of Electrical

[6] Our action in reopening the record herein for the purpose of conducting a further hearing on the C I. O.'s petition is a case in point

[7] The instant case exemplifies the aggregate effect of apparently legitimate delays. The proceeding were instituted 10 months ago, and no election has yet been held. We are of the opinion that rigid adherence to the principles governing intervention after hearing, stated above, will greatly minimize the incidence of such delays.

[8] Recently, by a *pro forma* order unaccompanied by decision in *Matter of Bethlehem-Alameda Shipyard, Inc et al* (Decision and Direction of Election reported in 53 N. L. R B. 999), we applied the rule herein restated in another instance where it appeared that to grant the motion for belated intervention would not, in and of itself, delay the conclusion of the proceedings There, we declined to permit the United Steelworkers of America, C. I O., which had organized subsequent to the hearing, to intervene and be placed on the ballot in an election theretofore directed by the Board upon the petition of another labor organization.

Workers, A. F. of L. be, and it hereby is, withdrawn, and the several petitions filed, respectively, by the above-named labor organizations in Cases Nos. 2–R–4446, 2–R–4449, 2–R–4459, and 2–R–4498, be, and they hereby are, dismissed.

AMENDMENT TO DIRECTION OF ELECTIONS

The National Labor Relations Board hereby orders that the Order Staying Election issued herein on January 8, 1944, be vacated and that the Direction of Elections issued herein on November 30, 1943, be amended by striking therefrom the words "not later than thirty (30) days from the date of this Direction" and substituting therefor "not later than thirty (30) days from the date of our Supplemental Decision, Order and Amendment to Direction of Elections herein," and by striking therefrom the words "who were employed during the pay-roll period immediately preceding the date of this Direction" and substituting therefor "who were employed during the pay-roll period immediately preceding the date of our Supplemental Decision, Order, and Amendment to Direction of Elections herein."

CHAIRMAN MILLIS took no part in the consideration of the above Supplemental Decision, Order and Amendment to Direction of Elections.

[See *infra*, 55 N. L. R. B. 1440 for Second Supplemental Decision and Third Amendment to Direction of Elections.]