

In the Matter of ATLANTIC BASIN IRON WORKS, INC. and LOCAL 39,  
INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF  
AMERICA, CIO

Case No. 2-R-4548.—Decided April 29, 1944

Mr. Frank B. Devlin, of New York City, for the Company.

Rothbard, Greenstone, Harris & Talisman, by Mr. Clarence Talisman, of Newark, N. J., for the Union.

Mr. William Strong, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Local 39, Industrial Union of Marine and Shipbuilding Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Atlantic Basin Iron Works, Inc., Brooklyn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Richard J. Hickey, Trial Examiner. Said hearing was held at New York City, on March 29, 1944. The Company appeared specially and the Union appeared generally.<sup>1</sup> 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

The Company, a New York corporation, is engaged in the repair, equipment, and maintenance of vessels of both domestic and foreign registry operated in coastal, intercoastal and foreign commerce, and

<sup>1</sup> See Section III, below.

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operates its yard in Brooklyn, New York. During 1943, its purchases of raw materials were in excess of \$1,500,000, over 30 percent of which was shipped to the Company from without the State of New York. During 1943, also, the Company repaired, equipped, or converted more than 12 steamships of over 10,000 tons capacity, which are engaged in coastal and intercoastal trade and commerce.<sup>2</sup>

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

## II. THE ORGANIZATION INVOLVED

Local 39, 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.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of the Company's timekeepers and control sheet employees, on the ground that the Union is precluded from seeking to represent such employees by a contract between the Union and the Company, dated August 11, 1942. The contract in question, in evidence, extends to the Union exclusive recognition as collective bargaining representative of all of the Company's production and maintenance employees, excluding, among others, timekeepers. The Company asserts that this exclusion of timekeepers from the production and maintenance unit precludes the Union from representing the timekeepers in a separate unit and, further, that timekeepers are a part of management. We disagree. As shown more fully in Section IV, below, timekeepers are not part of management. Nothing in the provision cited or elsewhere in the contract constitutes an undertaking by the Union not to represent the timekeepers. We find, accordingly, that nothing in the contract constitutes a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

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 asserts that all timekeepers and control sheet employees of the Company, excluding supervisory employees, constitute an ap-

<sup>2</sup> See also *Matter of Atlantic Basin Iron Works*, 5 N. L. R. B. 402.

<sup>3</sup> The Field Examiner reported that the Union submitted 31 authorization cards, and that there are 34 employees in the appropriate unit.

propriate unit. The Company disputes the Union's assertion for the reasons discussed above.

*Timekeepers* prepare time cards, place them in their racks, check in employees on jobs, and record work statistics, lateness, absences, and changes of jobs by employees. Timekeepers work in the plant and on ships at outside piers, and on the piers. They have no power to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees whose time they record, or effectively recommend such action. The timekeepers clearly perform the usual functions assigned to this category of employees. Nothing in the record or in our previous considerations respecting the status of timekeepers persuades us that timekeepers should be denied collective bargaining rights under the Act.<sup>4</sup> We shall include the timekeepers in the unit which we below find appropriate.

*The chief timekeeper and assistant chief timekeepers* supervise and direct the activities of the timekeepers. The chief timekeeper has authority to hire, discharge, promote, or discipline timekeepers, while the assistant chief timekeepers have the authority to effectively recommend the promotion, discharge, or discipline of timekeepers. The chief and assistant chief timekeepers fall within our definition of supervisory employees. We shall exclude them from the unit.

*Control sheet employees* are under the supervision of the pay-roll department. They receive the time cards from the timekeepers, double check the cards and post the information on them onto control sheets. They have the same department badge number and job number as timekeepers, receive the same hourly rate of pay, and punch the same time clock as, and work in close cooperation with, the timekeepers. They are excluded from bonus payments which the office personnel receive annually. Control sheet employees have no supervisory authority over, or recommendatory authority as to any other employees. We shall include the control sheet employees in the unit.

We find that all timekeepers and control sheet employees, excluding the chief timekeeper, the assistant chief timekeepers 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.<sup>5</sup>

<sup>4</sup> See e. g. *Matter of Bohn Aluminum & Brass Corp.*, 47 N. L. R. B. 1229; see also *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733.

<sup>5</sup> See e. g. *Matter of Inter Continent Aircraft Corp.*, 50 N. L. R. B. 99; *Matter of Todd Shipyards Corp.*, 51 N. L. R. B. 1211; *Matter of Aluminum Forgings Inc.*, 54 N. L. R. B. 1582.

## 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.<sup>6</sup>

## 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 Atlantic Basin Iron Works, Inc., 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 the 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 39, Industrial Union of Marine and Shipbuilding Workers of America, affiliated with the Congress of Industrial Organizations for the purposes of collective bargaining.

<sup>6</sup> Some question may arise as to the eligibility of Frederick Trumpf and Joseph McAdams to participate in the election. Trumpf, a timekeeper, is acting assistant chief timekeeper during the illness of one of the assistant chief timekeepers. Trumpf's eligibility to vote shall be governed by the position he occupies on the date of the election. If he is, still in his present capacity of acting assistant chief timekeeper, he shall be ineligible to vote. McAdams is a timekeeper who, in addition to his regular duties, checks the time cards of the other timekeepers. He has no powers or authority which might place him within our definition of a supervisory employee. McAdams is eligible to vote in the election.