

In the Matter of NEW JERSEY SHIPBUILDING CORPORATION and
INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA,
CIO and INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS
OF AMERICA, LOCAL 62, CIO

Case No. 4-R-1349.—Decided May 5, 1944

Mr. William J. Mahon, of New York City, for the 'Company.
Rothbard, Greenstone, Harris & Talisman, by Mr. Clarence Tuiss-
man, of Newark, N. J., for the Union.
Mr. Glenn L. Moller, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Union of Marine & Shipbuilding Workers of America, CIO, and its Local 62,¹ herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of New Jersey Shipbuilding Corporation, Barber, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Herman Lazarus, Trial Examiner. Said hearing was held at Perth Amboy, New Jersey, on March 27, 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. During the hearing the Company moved to dismiss the proceeding. For the reasons hereinafter appearing, the motion is denied.

¹ Although the original petition was filed by the International, during the hearing the Union moved to amend its petition to include as an additional petitioner, Local 62. This motion was granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

New Jersey Shipbuilding Corporation, a New Jersey corporation, is engaged in the construction of ships for the United States Navy at a shipyard located at Barber, New Jersey. During the year 1943 the Company used raw materials at its shipyard valued in excess of \$100,000. Over 50 percent of the raw materials used was shipped to the aforesaid shipyard from points outside the State of New Jersey. During the same period, the Company's finished products were valued in excess of \$100,000, all of which were delivered to the United States Navy.

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

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine & Shipbuilding Workers of America, affiliated with the Congress of Industrial Organizations, and its affiliated Local 62, are labor organizations 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 guards and watchmen until the Union has been certified by the Board in an appropriate unit.

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.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 Union contends that all watchmen and guards in the Company's employ, excluding the chief watchman and lieutenants, constitute an appropriate unit. The Company contends that militarized guards

² The Board agent reported that the Union submitted 67 application for membership cards and that the Company's pay roll of February 17, 1944, contained the names of 82 employees in the appropriate unit.

cannot constitute an appropriate bargaining unit, but agrees that if this contention is determined adversely to the Company, the unit proposed by the Union is appropriate. The evidence reveals that the watchmen and guards are militarized and uniformed. They are hired by the Company and remain primarily under its control during their employment. We find nothing in this case to warrant departure from our customary policy with reference to units of such employees.³

The Company further contends that even if the bargaining unit is found to be appropriate, the Union should not be permitted to represent the employees in such unit, because the Union already represents the production and maintenance employees. We have considered this contention on many occasions and have uniformly held that the right of employees to select a bargaining representative of their own choosing cannot be thus limited.⁴

We find that all militarized watchmen and guards in the employ of the Company at Barber, New Jersey, but excluding the chief watchman and lieutenants and all or 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 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, subject to the limitations and additions set forth in the Direction.

Although both the International and the Local of the Union have petitioned jointly in this proceeding, certification in such terms might be ambiguous. We shall accordingly designate only the local on the ballot, identifying the local as part of the International and giving the full name of the International.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,

³ *Matter of Goodyear Aircraft Corporation, Arizona Division*, 54 N L R B 844; *Matter of Dravo Corporation*, 52 N L R B 322; *Matter of Maryland Drydock Company*, 50 N L R B. 363

⁴ *Matter of Phelps Dodge Copper Products Corp.*, 41 N L R B, 973; *Matter of Bethlehem Steel Company*, 45 N L R B 92

⁵ See *Matter of Phelps Dodge Corporation, Copper Queens Branch, Mines Division*, 54 N. L. R. B. 1293.

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 New Jersey Shipbuilding Corporation, Barber, 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 Fourth 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 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 Industrial Union of Marine & Shipbuilding Workers of America, Local 62, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.