

In the Matter of SULLIVAN DRYDOCK AND REPAIR CORP., and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 13, C. I. O.

Case No. 2-R-4610.—Decided May 17, 1944

Mr. J. Reed Smith, of Brooklyn, N. Y., for the Company.

William L. Standard, by *Mr. Herman Rosenfeld*, 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 Industrial Union of Marine and Shipbuilding Workers of America, Local 13, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Sullivan Drydock and Repair Corp., Brooklyn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Jerome I. Macht, Trial Examiner. Said hearing was held at New York City, on March 30, 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Sullivan Drydock and Repair Corp., a New York corporation, is engaged in manufacturing propeller wheels and repairing and con-

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verting ships for commercial customers, the United States Navy, Army, and Maritime Commission, at Brooklyn, New York. Most of the propeller wheels manufactured by the Company are shipped outside the State of New York. The ships repaired or converted by the Company during the past year were valued at over \$1,000,000, and were used in foreign commerce and intercoastal waters. During the same period, materials valued in excess of \$500,000 were purchased by and shipped to the Company from points outside the State of New York. Almost all of the Company's 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

Industrial Union of Marine and Shipbuilding Workers of America, Local 13, 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 its timekeepers 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.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 Union has been certified and recognized as the collective bargaining representative of certain of the Company's production and maintenance employees in a unit excluding timekeepers, among others.² Pursuant to consent elections it has also been recognized as the representative of the Company's watchmen and guards in one unit, and fire watchers in another. It now seeks a unit of timekeepers and, if it should be selected by a majority of them, it desires to combine them with the other employees it represents as a single bargaining group. The Company contends that its timekeepers perform managerial functions and, consequently, cannot form an appropriate unit or be

¹ The Field Examiner reported that the Union submitted 21 authorization cards; that there are 23 employees in the appropriate unit; that 11 cards were dated February 1944, and 10 were undated.

² 37 N. L. R. B. 13 and 39 N. L. R. B. 61.

merged with other employees, and also urges that if they are established as a separate unit, they should not be represented by the labor organization currently representing its production and maintenance employees. There is also some disagreement between the Company and the Union as to the specific composition of the unit.

There are approximately 22 timekeepers employed in the Company's timekeeping department. In charge of the department is the chief timekeeper. He reports to the treasurer of the Company. The treasurer is in charge of part of the clerical force in the main office, and the accounting, pay-roll, and timekeeping departments. The president of the Company is in charge of the production departments.

The timekeepers check the production and maintenance employees through the gates at the beginning and end of the various shifts. During the shifts, the timekeepers board the vessels being repaired, go through the shops and, with the consultation of the snappers, make a record of the workers' badge numbers and the work at which they are employed. The data so collected is used by the Company to make up the pay rolls for the production and maintenance employees and to allocate labor costs for its various contracts. The timekeepers spend at least two-thirds of their work day in the office performing clerical work in collating and posting the information they have gathered. They do not direct the work of the employees whose time they report.

The Company's contention that the timekeepers perform managerial functions is not supported by the record. While the timekeepers possess or have access to information concerning the earnings of other employees and the nature of the work being done by the Company, the record does not disclose that they possess information pertaining directly to labor relations. Nor are we convinced that the possibility that the same labor organization which at present represents certain production and maintenance employees may also represent the timekeepers, is enough to preclude the latter from the right to bargain collectively. We perceive no conflict between self-organization for the purposes of collective bargaining and the faithful performance of duty. Moreover, the remedy for inefficiency, neglect of duty, collusion, or other improper conduct on the part of the timekeepers, or other employees, lies in the power of the Company to discipline and discharge. We see no reason, therefore, why the same labor organization may not, if chosen by the timekeepers, represent them as well as other employees of the Company.³

The Union, as noted above, seeks to join the timekeepers with the other employees it represents. We had occasion in a previous proceeding⁴ to consider the question of including timekeepers within a

³ See *Matter of The Ingalls Shipbuilding Corporation*, 55 N. L. R. B. 629, and cases there cited.

⁴ See footnote 2, *supra*.

unit of the Company's production and maintenance workers, and we determined to exclude them. The record in this proceeding discloses that the timekeepers are primarily engaged in clerical work, constitute one of several clerical departments under the charge of one company official, and perform a function in production different from that of the employees now represented by the Union. We are of the opinion that the foregoing considerations indicate a diversity of interest between the timekeepers and the other employees whom the Union represents and the appropriateness of a separate unit confined to the timekeepers.⁵ Consequently, we shall not provide for the merger of the two groups in the event the timekeepers designate the Union as their exclusive bargaining agent.

There remains for consideration the specific composition of the timekeepers' unit. The timekeeping department's supervisory employees consist of the chief timekeeper, the night assistant chief timekeeper, and the day assistant chief timekeeper. The Company and the Union agree, and it is clear, that the chief timekeeper and the night assistant chief timekeeper should be excluded from the unit as supervisory employees. They are in disagreement, however, concerning the day assistant chief timekeeper, the Union contending that he should be included, and the Company that he should be excluded as a supervisory employee.

The day assistant chief timekeeper aids the chief timekeeper in the execution of his duties, and, unlike the timekeepers, he computes piece or "dirty work" pay, withdraws money from the cashier's office on his own signature, represents the Company in its dealings with Government agencies, and advises the chief timekeeper of the necessity for assignment of timekeepers at particular locations and indicates the men available for that work. In addition, the day assistant chief timekeeper acts for the chief timekeeper when he is away. Under these circumstances, he has the right to discipline, hire, and discharge, and among other things, he runs the office, assigns the men to their work, takes up matters of policy with the Company, compiles confidential reports, and attends supervisors' meetings. We are of the opinion that the day assistant chief timekeeper falls within our customary definition of supervisory employees, and we shall accordingly exclude him.

We find that all the Company's timekeepers, excluding the chief timekeeper, the night assistant chief timekeeper, the day assistant chief timekeeper, 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

⁵ See *Matter of General Motors Corporation*, 51 N. L. R. B. 1366; *Matter of Todd Johnson Drydocks, Inc.*, 54 N. L. R. B. 1362.

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 Sullivan Drydock and Repair Corp., 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 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 Industrial Union of Marine and Shipbuilding Workers of America, Local 13, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.