

In the Matter of H. J. DE FOE, F. W. DE FOE, T. J. DE FOE, W. M. DE FOE, AND W. F. DE FOE, COPARTNERS, D/B/A DEFoe SHIPBUILDING COMPANY and LOCAL 49, INDUSTRIAL UNION, MARINE AND SHIPBUILDING WORKERS, C. I. O.

Case No. 7-R-1712.—Decided May 22, 1944

Mr. Albert E. Meder, of Detroit, Mich., for the Company.

Mr. Herbert Thompson, of Bay City, Mich., and *Mr. Gerald Millen*, of Detroit, Mich., 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 49, Industrial Union, Marine and Shipbuilding Workers, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of H. J. De Foe, F. W. De Foe, T. J. De Foe, W. M. De Foe, and W. F. De Foe, Copartners, d/b/a DeFoe Shipbuilding Company, Bay City, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Harold A. Cranefield, Trial Examiner. Said hearing was held at Bay City, Michigan, on April 17, 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 Company moves for a dismissal of the petition. For reasons more fully set forth in Section III, *infra*, the motion is denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a partnership engaged at a shipyard at Bay City, Michigan, in the construction of ships for the United States Navy.

56 N. L. R. B., No. 149.

During the year ending March 21, 1944, the Company used materials consisting principally of steel and heavy machinery, of which approximately 90 percent was received from outside the State of Michigan. During the same period, ships of a gross value exceeding \$30,000,000 were completed by the Company and delivered to the Navy.

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

II. THE ORGANIZATION INVOLVED

Local 49, Industrial Union, Marine and Shipbuilding Workers, 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 plant-protection employees. The Company asserts that the plant-protection employees are not "employees" within the meaning of the Act, that they constitute a "part of supervision and a part of management" and were so recognized by the Union when it executed its contract with the Company covering production and maintenance employees, and that they are "excluded from coverage" by the terms of the agreement between the Company and the Union. The Company, in addition, objects to representation of the plant-protection employees by the same union which represents the production and maintenance employees, on the ground, in effect, that the plant-protection employees could not honestly "serve two masters—the Company and the Union." Finally, the Company asserts that the Board is precluded from continuing this proceeding by the rider to the Appropriations Act of 1944.

We find no merit in any of the Company's contentions. We have repeatedly held, and we reiterate, that plant-protection employees are "employees" within the meaning of the Act, that they do not ordinarily constitute a part of management and that they are not supervisory employees.¹ The plant-protection employees in this case perform no functions and exercise no powers which would cause them to fall within our usual definitions of supervisory employees² or

¹ See, e g, *Matter of Maryland Drydock Corporation*, 50 N. L. R. B. 363; *Matter of Dravo Corporation*, 52 N. L. R. B. 322; *Matter of Cramp Shipbuilding Company*, 46 N. L. R. B. 1186.

² The Company's plant-protection employees have no supervision over production or maintenance employees and work as such, although their reports upon violations of plant rules and related matters may form the basis of disciplinary action and discharge

within the term "management."³ The Company's reliance upon our decision in the *Maryland Drydock* case⁴ is clearly not sound since the reasoning in that case was directed to supervisory employees and plant-protection employees are not within that category.

Nothing in the contract between the Company and the Union supports the Company's assertion that the union has undertaken not to represent the plant-protection employees. While it limits by certain exclusions the unit in which the Union is there recognized, there is no term or provision which can be construed as either directly or impliedly constituting an undertaking not to represent the excluded categories of employees in separate units.⁵ The Union here does not seek the inclusion of the plant-protection employees in the production and maintenance unit; it seeks to represent them in a separate unit.

We see no cogent reason for denying to the plant-protection employees, if they so desire, representation for collective bargaining purposes under the Act by the labor organization which represents other employees of the Company for similar purposes. Nothing in our experience leads us to conclude that the exercise of rights under the Act by employees is incompatible with their loyal, full, and honest performance of duties. The remedy for inefficiency, disregard or neglect of duty, collusion or other improper practices by employees lies implicitly in the power of the employer to discipline and discharge.

The rider to the Appropriations Act of 1944 does not bar our proceeding upon a petition for investigation of representatives under Section 9 (c) of the Act.⁶

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.⁷

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.

³ There is some testimony by an official of the Company to the effect that plant-protection employees "have access to certain confidential matters," that they prepare daily reports to their superiors containing "a considerable amount of confidential information," and that they collect and place in their receptacles blueprints "that may be left around the plant . . . so they will not be available to production employees." The record does not show that the confidential information referred to relates to personnel matters other than the reports, prepared by the plant-protection employees, dealing with violations and misconduct of others, and the record shows that the blueprints are available to production and maintenance employees as well.

⁴ *Matter of Maryland Drydock Corporation*, 49 N. L. R. B. 733.

⁵ Cf. e. g., *Matter of Packard Motor Car Company*, 47 N. L. R. B. 932; *Matter of General Motors Corporation*, 51 N. L. R. B. 1366; *Matter of Ingalls Shipbuilding Corporation*, 55 N. L. R. B. 629.

⁶ Moreover, the Company's reliance upon its contract with the Union is additionally misplaced since the contract does not contain any of the terms or provisions which the Company seeks to read into it.

⁷ The Field Examiner reported that the Union submitted 32 membership application cards all of which bore apparently genuine original signatures; that the names of 26 persons appearing on the cards were listed on the Company's pay roll of February 27, 1944, which contained the names of 63 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with a stipulation of the parties, that all plant-protection employees of the Company, excluding clerical employees, the chief, lieutenants, sergeants, 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.

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 H. J. De Foe, F. W. De Foe, T. J. De Foe, W. M. De Foe, and W. F. De Foe, Co-partners, d/b/a DeFoe Shipbuilding Company, Bay City, Michigan, 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 Seventh 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 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 Local 49, Industrial Union, Marine and Shipbuilding Workers, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.