

In the Matter of BREWER DRY DOCK COMPANY and INDUSTRIAL UNION
OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O.

Case No. 2-R-4482.—Decided May 26, 1944

Messrs. Carl J. Sauer and Walter Parker, of New York City, for the Company.

Messrs. Charles S. Brecht and Charles A. Leone, of New York City, for the C. I. O.

Messrs. Alfred Terry and Peter P. Sharkey, of New York City, for the I. B. E. W.

Mr. Herman Methfessel, of New York City, for the Association.

Mrs. Margaret L. Fassig, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Brewer Dry Dock Company, Staten Island, New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David H. Werther, Trial Examiner. Said hearing was held at New York City on April 18, 1944. The Company, the C. I. O., the International Brotherhood of Electrical Workers, Marine Local 277,¹ herein called the I. B. E. W., and the Brewer Dry Dock Employees Association, Inc., herein called the Association, 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 C. I. O. and the Association made motions at the close of the hearing to dismiss the I. B. E. W.'s motion to intervene. The Trial Examiner referred these motions to the Board for ruling, and they are hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby

¹ The motions of the I. B. E. W. and of the Association were granted at the hearing.

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

Brewer Dry Dock Company is a New Jersey corporation having its main office and shipyard at 2945 Richmond Terrace, Mariners Harbor, Staten Island, New York, where it is engaged in the repair and conversion of ships. During the last 12 months, the Company purchased raw materials, consisting principally of steel, wood, brass, copper, pipe, electrical supplies, and paint, of a value in excess of \$1,000,000, approximately 75 percent of which was shipped to its shipyard in New York from points outside that State. During the same period the Company's sales amounted to more than \$1,000,000, approximately 90 percent of which was sold to the United States Government.

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

II. THE ORGANIZATIONS INVOLVED

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.

Brewer Dry Dock Employees Association, Inc., is an unaffiliated labor organization admitting to membership employees of the Company.

Marine Local 277, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, 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 C. I. O. as the exclusive bargaining representative of its production and maintenance employees until the C. I. O. has been certified by the Board in an appropriate unit.

There is a current collective bargaining contract between the Association and the Company, which will not expire until August 2, 1944. The contract is for a term of 2 years and was executed on August 2, 1942. At the time of the hearing it had already run for over a year and a half, and both the Association and the Company waived assertion of the contract as a bar to this proceeding. We find that the contract is not a bar to a present determination of representatives for collective bargaining purposes.

A statement of Board agent, introduced into evidence at the hearing, indicates that the C. I. O. and the I. B. E. W. each represents a substantial number of employees in the unit which it alleges to be 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 C. I. O. and the Association each contends that all production and maintenance employees of the Company, including electricians, electricians' helpers, material checkers, storeroom and toolroom employees, and chauffeurs,³ but excluding guards, watchmen, janitors, technical engineers, draftsmen, office and clerical employees, snappers, leadmen, and foremen constitute an appropriate unit for the purposes of collective bargaining. They are in disagreement as to timekeepers, whom the Association would include within, and the C. I. O. would exclude from, the unit.

The I. B. E. W. contends that all of the Company's electrical employees engaged in production and maintenance, including electricians, electricians' helpers, and snappers in the electrical department, constitute a separate appropriate bargaining unit, and it requests an election in such unit.

The Company took no position with respect to the scope of the unit, but indicated it preferred to deal with only one labor organization.

There are approximately 900 employees in the plant-wide industrial unit alleged appropriate by the C. I. O. and the Association, about 80 of whom are employed in the unit claimed appropriate by the I. B. E. W. The Company's employees engage in many different trades, among them being carpenters, pipe fitters, boilermakers, riggers, iron workers, tinmiths, wood caulkers, blacksmiths, machinists, crane operators, riveters, welders, burners, chippers, electricians, and laborers. The function of each craft is essential to the repair and conversion of ships. Each of the various craft groups is departmentalized, in the sense that each craft is segregated and works under a separate foreman, and there is very little interchange of employees between the crafts. In the main, there is no physical demarcation in the work of the various trades, most

² The Field Examiner reported that the C. I. O. had submitted 350 authorization cards; that the names of 269 persons appearing on the cards were listed on the Company's pay roll of January 16, 1944, which contained the names of 895 employees in the appropriate unit; and that the cards were dated as follows: 170 undated, 28 in 1943, and 71 in March 1944. In support of its claim of interest in this proceeding, the Association relied upon its current contract. The I. B. E. W. submitted 31 authorization cards. The names of 30 persons appearing on the cards were contained in the aforesaid pay roll. The cards were dated: 10 in January 1944 and 20 in February 1944. The number of employees on the pay roll in the unit claimed appropriate by the I. B. E. W. was 80.

³ This is substantially the contract unit bargained for by the Association.

of the employees being at work throughout the yard on the ships, piers, and in the shops. The Company's operations are functionally integrated and the work of each of the craft groups in the shipyard is directly related to and dependent upon that of the others. Similar working conditions and rates of pay prevail for workers of similar skill in all the various categories.

The Association has bargained under both its current and a preceding contract, and prior thereto, for all of the Company's hourly paid production and maintenance employees, including the electricians and their helpers. Collective bargaining covering terms and conditions of work of the Company's employees was conducted between the Company and the Association on an oral basis for a period of about 2 to 2½ years prior to the execution of their first written contract in April 1941. The record does not show when the I. B. E. W. first presented its claim to the Company for recognition as exclusive bargaining representative of the employees in the unit it seeks, but the authorization cards it submitted in support of its claim of representation are all of recent date.⁴ The I. B. E. W. has shown no history of collective bargaining for the electricians as a separate group in this Company's shipyard. On the other hand, it appears from the record that the Association has members among the employees in the electrical department, which virtually comprises the unit sought by the I. B. E. W., and the Association has a shop steward for the electrical department. There is nothing in the record to indicate that the electricians have resisted representation by the Association in the plant-wide unit, or that they ever sought separate representation until they signed authorization cards in the I. B. E. W. in January and February 1944.⁵ In view of the approximately 5 years of collective bargaining on the basis of a plant-wide unit, including the electricians, in which collective bargaining the electricians have acquiesced, we find the plant-wide unit sought by the C. I. O. and the Association to be appropriate for collective bargaining purposes and therefore find inappropriate the separate craft unit requested by the I. B. E. W.

The only category of employees concerning which there was disagreement between the C. I. O. and the Association, was that of the timekeepers, whom the Association would include in the bargaining unit, and the C. I. O. would exclude therefrom. The timekeepers are hourly paid employees who work in the plant. Their hourly rate of pay is somewhere between the rate paid to first grade helpers and that paid to third grade mechanics. They have been bargained for in the

⁴ See footnote 2, *supra*.

⁵ The Association submitted in evidence a document bearing 28 signatures which purported to revoke authorization previously given to the I. B. E. W. by the signers, and demanded the privilege of participating in the plant-wide election of employees of the Company.

past by the Association and we shall include them in the bargaining unit.

We find that all of the production and maintenance employees of the Company, including electricians, electricians' helpers, material checkers, storeroom and toolroom employees, chauffeurs, and timekeepers but excluding guards, janitors, technical engineers, draftsmen, office and clerical employees, snappers,⁶ leadmen, foremen, and all or any other supervisory employees with authority to hire, promote, discipline, discharge, 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 the Brewer Dry Dock Company, Staten Island, New York City, 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 those employees who have since quit or been

⁶ Although the I B E W contended the snappers should be included in the unit it sought to represent, the C I O. and the Association contend that they should be excluded from the unit as supervisory employees, and we so find.

discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by the Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., or by Brewer Dry Dock Employees Association, Inc., for the purposes of collective bargaining, or by neither.

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