

In the Matter of P. S. THORSEN & COMPANY, INC. and MAINTENANCE
WORKERS AND PIPE COVERERS LOCAL #1474-1, INTERNATIONAL LONG-
SHOREMAN'S ASSOCIATION

Case No. 2-R-4647.—Decided June 10, 1944

Messrs. Raymond Woodward and W. L. Davies, of Brooklyn, N. Y., for the Company.

Mr. Louis Waldman, by Mr. Samuel Duker, of New York City, for the ILA.

Mr. William L. Standard, by Mr. Herman Rosenfeld, of New York City, and Mr. Morris Miller, of Brooklyn, N. Y., for the CIO.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Maintenance Workers and Pipe Coverers Local #1474-1, International Longshoreman's Association, herein called the ILA, alleging that a question affecting commerce had arisen concerning the representation of employees of P. S. Thorsen & Company, Inc., Brooklyn, New York,¹ 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 Brooklyn, New York, on May 9, 1944. The Company, the AFL, and Industrial Union of Marine and Shipbuilding Workers of America, CIO, Local #13, herein called the CIO, 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.

¹ At the hearing upon suggestion of the Trial Examiner, the pleadings in the case were amended to correspond with this, the correct corporate name of the Company.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

P. S. Thorsen & Company, Inc., is a New York corporation engaged in furnishing and applying all types of insulation on board ships in the port of New York and surrounding territory in New Jersey. Its principal office and place of business is in Brooklyn, New York, and it has warehouses in Brooklyn, New York, and in Hoboken, Kearny, and Port Newark, New Jersey. The annual value of its raw materials exceeds \$100,000. These materials are installed on war ships including transports and cargo ships. The annual value of the installations made by the Company exceeds \$250,000. About 50 percent of the materials purchased by the Company moves in interstate commerce to the Company's warehouses.

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

II. THE ORGANIZATIONS INVOLVED

Maintenance Workers and Pipe Coverers, Local #1474-1, International Longshoreman's Association, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Industrial Union of Marine & 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 CIO has had contracts with the Company from year to year since 1937. The contract entered into on June 5, 1942, expired on June 5, 1943. At that time, the parties, not having agreed upon the terms of a new contract, extended the term of the expired contract to June 30, 1943, and subsequently extended it "until a new agreement shall have been signed between the parties." Matters in issue were then referred to a mediator who certified the dispute to the National War Labor Board. In September 1943, the Regional War Labor Board issued a Directive Order to which the CIO filed an appeal. In March 1944, the ILA requested the Company to recognize it as the exclusive bargaining representative of its employees. The Company refused, stating that it was bound by the CIO contract. Thereafter, on May 2, 1944, pursuant to a final Directive Order issued by the National War Labor Board, the Company and the CIO entered into a contract which was dated June 5, 1943, and was to expire June 5,

1944, unless continued by mutual agreement of the parties. The CIO agreed therein to present its new agreement to the Company 30 days prior to the termination date. On May 2, 1944, the CIO presented to the Company its proposed new contract which at the time of the hearing had not been executed by the parties.

The CIO contends that its contracts, including the one submitted to the Company on May 2, 1944, but not yet signed, constitute a continuous collective bargaining relationship between it and the Company; that each agreement is a renewal of its predecessor and that the series of contracts constitutes a bar to a present determination of representatives. The CIO contends further that its failure to execute a contract prior to the date of the ILA's request for recognition was a direct result of its having resorted to the procedures of the War Labor Board, an act for which it should not be penalized. The contentions are without merit. The CIO has had the opportunity to represent the employees of the Company for a number of years; it, therefore, merits no special consideration by reason of its having resorted to governmental procedures.² Its present contract on behalf of those employees is about to expire and the new one which it hoped to put into effect has not been executed.³ We find the contracts of the CIO no bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the ILA represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

All parties are in agreement that the appropriate unit shall consist of all production workers of the Company exclusive of timekeepers, chauffeurs, truck drivers, warehousemen, office workers, and supervisory employees. The parties are further in agreement that employees classified as job foremen and strawbosses should be included in the unit.

The Company employs a general superintendent, 6 assistant superintendents, approximately 40 job foremen, and approximately 20 strawbosses. The general superintendent is in charge of all operations and

² See *Matter of Fort Dodge Creamery Company*, 53 N. L. R. B. 928; *Matter of International Harvester Company*, 55 N. L. R. B. 497.

³ See *Matter of Ecor, Inc.*, 46 N. L. R. B. 1035.

⁴ The Field Examiner reported that the ILA submitted 391 application for membership cards, 376 of which bore the names of persons listed on the Company's pay roll of March 19, 1944, which contained the names of 504 employees in the appropriate unit. Of these cards, 318 were dated between January 14 and April 1, 1944, and 58 were undated. At the hearing, the ILA submitted 106 additional cards. The CIO relied upon its contracts to show its interest in the proceeding.

is located at the Company's main office in Brooklyn, New York. His 6 assistants are stationed, 1 each, in Brooklyn, New York, Hoboken and Port Newark, New Jersey, and 3 in Kearny, New Jersey. As ships come into, or reach a certain stage of construction in, the shipyards located in the vicinity of these ports, the Company is notified that a job is to be performed upon them. A crew is then chosen by an assistant superintendent; at the same time an employee, chosen from the ranks of the first and second class mechanics and designated as job foreman, is placed in charge of the crew. If the crew is large, one or more strawbosses may be assigned to assist the job foreman. The job foreman and the strawbosses may or may not have had previous experience in that capacity. A job foreman is in complete control of the job to which he is assigned and bears the responsibility for the job. He is supervised through telephone contact with the assistant superintendent who issued his assignment. He lays out the work for his men, sees that they have the proper material to do it, acts as time-keeper for them, keeps the Company informed of the nature of the work to be done and the rate of progress towards its completion, and returns unused material to the warehouses of the Company. He may not hire or discharge, but he may reprimand a subordinate and may cause his transfer from the job for reasons of insubordination, inability, or lack of need for the workman's services. His recommendations concerning the abilities of persons working with him are the basis for effective recommendations made by the assistant superintendents. The recommendations of the assistant superintendents, however, are made after independent investigation. A job foreman seldom performs manual labor, but, if his crew is very small, he may work with tools. A strawboss performs similar duties and has similar authority, but he reports to the job foreman rather than to the assistant superintendent and he bears less responsibility than does the job foreman.

It is evident that job foremen and strawbosses exercise a certain amount of supervisory authority. However, the classification and accompanying authority are temporary. In the operation of the Company's business, it is not uncommon for an employee who acts as job foreman of one job to work under a job foreman, as a mechanic, on another. These employees have been included in the appropriate unit and covered by the CIO's contracts since 1937. In view of the agreement of the parties, the temporary nature of the authority vested in job foremen and strawbosses, the constant interchange between these employees and persons within the unit of production employees, and the history of bargaining whereby they have been included in such a unit, we find that job foremen and strawbosses are not supervisory employees within our usual definition of the term.

We find that all production workers of the Company, including job foremen, and strawbosses, but excluding timekeepers, chauffeurs, truck drivers, warehousemen, office workers, and 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.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, 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 P. S. Thorsen & Company, 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 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 they desire to be represented by Maintenance Workers and Pipe Coverers Local #1474-1, ILA (A. F. of L.), or by Industrial Union of Marine and Shipbuilding Workers of America, Local #13, CIO, for the purposes of collective bargaining, or by neither.

⁵ The ILA has requested that its name appear on the ballot as Maintenance Workers and Pipe Coverers Local #1474-1, ILA (A. F. of L.). The request is hereby granted.