

In the Matter of WHEELER SHIPBUILDING CORPORATION and MARINE WORKERS METAL TRADES DISTRICT COUNCIL OF THE PORT OF NEW YORK, A. F. OF L. AND ITS AFFILIATED CRAFT UNIONS

Case No. 2-R-4512.—Decided June 12, 1944

*Cullen & Dykman*, by *Mr. Maximilian Moss*, of Brooklyn, N. Y., and *Mr. Eugene M. Wheeler*, of Whitestone, N. Y., for the Company.

*Messrs. Arthur Olsen* and *William J. Rowe*, of New York City, for the AFL.

*Messrs. William McCaffrey* and *Edmund Spivak*, of New York City, 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 Marine Workers Metal Trades District Council of the Port of New York, A. F. of L., and its affiliated craft unions,<sup>1</sup> herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Wheeler Shipbuilding Corporation, Whitestone, Long Island, 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 April 20, 26, and 27, 1944. The Company, the AFL, and Industrial Union of Marine & Shipbuilding Workers of America, CIO, herein called the CIO,<sup>2</sup> appeared and participated.<sup>3</sup> 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.

<sup>1</sup> At the hearing, upon motion of the AFL, the pleadings were amended to conform with this, the proper designation of the petitioner.

<sup>2</sup> The CIO intervened only as *amicus curiae* and did not request a place on the ballot.

<sup>3</sup> Wheeler Employees Independent Union, also served with notice, did not appear.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

Wheeler Shipbuilding Corporation, a New York corporation, is engaged in operating a shipyard at Whitestone, Long Island, wherein it constructs vessels for the war program, pursuant to a contract with the United States Government. The vessels are chiefly mine sweepers, tugs, PC boats, freight and passenger ships. The principal raw materials used in their construction are wood and steel. The total value of such raw materials for the year preceding the hearing exceeded \$300,000, and approximately 50 percent thereof came to the yard from points outside the State of New York. During the same period the Company constructed ships of a value in excess of \$300,000. A majority of these ships are used in waters outside the State of New York and in foreign waters.

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

#### II. THE ORGANIZATIONS INVOLVED

Marine Workers Metal Trades District Council of the Port of New York, affiliated with the American Federation of Labor, is a labor organization admitting to membership through its affiliated unions, 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 Company has refused to grant recognition to the AFL as the exclusive bargaining representative of its employees until the AFL 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 AFL represents a substantial number of employees in the unit hereinafter found appropriate.<sup>4</sup>

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.

<sup>4</sup> The Field Examiner reported that the AFL submitted 776 authorization cards, 613 of which bore the names of persons listed on the Company's pay roll of April 24, 1944, which contained the names of approximately 1,960 employees in the appropriate unit; and that the cards were dated December 1943 through February 1944.

## IV. THE APPROPRIATE UNIT

The unions are in agreement that an appropriate unit for bargaining between the Company and its employees is one composed of all production and maintenance employees at the Company's Whitestone Yard including snappers, leadmen, subforemen, and stockroom, storeroom, and toolroom employees, but excluding office and clerical employees, foremen, supervisors, watchmen, guards, employees of the Electrical Department of the Company,<sup>5</sup> dock masters, and porters. The Company is in agreement that the unit requested is appropriate, but it would exclude therefrom snappers, leadmen, and subforemen on the ground that they are supervisory employees, and stockroom, storeroom, and toolroom employees on the grounds that they are clerical employees and representatives of management.

*Subforemen, snappers and leadmen:* The hierarchy of the Company is substantially as follows: officers, personnel department, production manager, foremen, subforemen, leaders and snappers, first-class mechanics, and other employees. All parties agree that foremen are supervisory employees. Although subforemen have a lesser degree of responsibility than foremen, they share all of the authority of foremen. Accordingly, we find that subforemen are supervisory employees and shall exclude them from the unit.

Snappers and leadmen<sup>6</sup> are in charge of small groups of employees ranging in size from 5 to 15 persons. They lay out the work for these employees, instruct them in its execution, and inspect it from time to time to see that it is properly done. Recommendations concerning the change of status of the employees with whom they work are initiated by them by reports they make to the foremen. The foremen, however, make independent investigations on the basis of these reports and make their own recommendations to the production manager or allow the matter to drop. The Company admits that, although the authority of snappers and leadmen is broad in theory, in practice it is not exercised. According to a former employee of the Company, requests for raises in pay, permission to deviate from plans, or adjustment of grievances are in first instance taken to the snapper or leadman who invariably refers the men to the foreman or subforeman and accompanies them when they make the request of the foreman. Snappers work under the same working conditions as the men under them and are entitled to the same bonuses for overtime and dangerous work.

<sup>5</sup> Employees of the Electrical Department are covered by a contract between the Company and International Brotherhood of Electrical Workers, Marine Local Union No. 277, herein called the IBEW.

<sup>6</sup> Snappers and leadmen have the same authority. They are herein collectively referred to as snappers.

When the work being performed by a snapper's crew has been completed, the snapper is given the opportunity to remain with the Company as a first-class mechanic until such time as another opening for a snapper occurs. While working as a snapper, an employee does not lose the seniority he has earned as a mechanic, but the time he spends as a snapper is added to the time he has worked for the Company as a mechanic and is considered in determining his seniority. The Company maintains a separate seniority list wherein it records the amount of time each man spends as a snapper and uses this list in determining which snappers shall be demoted to mechanics and which mechanics shall be returned to the status of snappers. The contract of the IBEW, which covers the electrical workers of the Company, includes snappers in the unit which it represents.

From its seniority policy it is evident that the Company does not consider these employees a part of its permanent supervisory staff. The Company's policy of relying solely upon the independent investigations of the foremen negatives the effectiveness of the recommendations made by the snappers. We find that snappers and leadmen are production and maintenance employees whose status is not substantially different from that of other production and maintenance employees and shall include them in the unit.<sup>7</sup>

*Stockroom, storeroom, and toolroom employees:* There are approximately 40 employees in the stockroom, 10 in the storeroom, and 10 in the toolroom. Their duties and responsibilities are substantially the same. Stockroom and storeroom employees open and check materials, put them in proper order, prepare, furnish and box them for delivery to the vessels, issue receipts, and keep records. The Company maintains a toolroom from which workmen may borrow tools which they need and do not ordinarily own. The toolroom employees issue and receive these tools, sign receipts, and keep records. The work of all of these employees is ministerial, involving very little discretion. The amount of clerical work performed by them is not, in our opinion, sufficient to warrant classifying them as clerical employees; their responsibilities are not managerial. We find that they are closely related to production and maintenance employees, and shall include them in the appropriate unit.

We find that all production and maintenance employees at the Company's Whitestone Yard, including snappers, leadmen, and stockroom, storeroom, and toolroom employees, but excluding office and clerical employees, foremen, subforemen, watchmen, guards, employees of the Electrical Department of the Company, dock masters, porters, 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 ap-

<sup>7</sup> See *Matter of Manning, Maxwell & Moore*, 53 N. L. R. B. 951

propriate 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.<sup>8</sup>

#### 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 Wheeler Shipbuilding Corporation, Whitestone, Long Island, 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 payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll 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 Marine Workers Metal Trades Council of the Port of New York, A. F. of L., for the purposes of collective bargaining.

<sup>8</sup> The AFL requests that the words "and its affiliated craft unions" be included in its designation on the ballot. Since, in our opinion, such a designation on the ballot, and in a certification, would be ambiguous, we shall direct that the AFL appear on the ballot as it is designated in the petition, as amended, with the deletion of the quoted words.