

In the Matter of NORTH CAROLINA SHIPBUILDING COMPANY and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, CIO

Case No. 5-R-1528.—Decided June 29, 1944

*Mr. George L. Weasler*, for the Board.  
*Messrs. L. P. McLendon* and *Kenneth M. Brim*, of Greensboro, N. C., for the Company.  
*Mr. M. H. Goldstein*, of Philadelphia, Pa., for the C. I. O.  
*Mr. David Sinclair*, of Wilmington, N. C., for the U. S. A.  
*Mr. D. B. Kelly*, of Wilmington, N. C., for the A. F. L.  
*Mr. William R. Cameron*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Industrial Union of Marine and Shipbuilding Workers of America, CIO, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of North Carolina Shipbuilding Company, Wilmington, North Carolina, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earl S. Bellman, Trial Examiner. Said hearing was held at Wilmington, North Carolina, on April 27, 1944. The Company, the C. I. O., and United Shipbuilders of America, Inc., herein called the U. S. A., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.<sup>1</sup> At the hearing the Company moved the dismissal of the petition on the ground that less than 1 year has elapsed since an election was conducted by the Board in a prior case involving the employees whom the C. I. O. here seeks to

<sup>1</sup>The Metal Trades Department of the American Federation of Labor, the Wilmington Building Construction Council and Metal Trades Council, and the International Union of Operating Engineers, were also served with notice of the hearing. In response to this notice the president of the Wilmington Metal Trades Council was present at the hearing. None of the organizations so notified, however, participated or moved to intervene.

represent. For reasons hereinafter appearing, this motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

North Carolina Shipbuilding Company is a North Carolina corporation having its principal place of business at Wilmington, North Carolina, where it is engaged in the construction of ocean-going and other cargo vessels, which, upon completion and after test runs, are delivered to the United States Maritime Commission or the United States Navy, by which they are used in interstate and foreign commerce. The principal raw materials, equipment, and supplies used by the Company come from various States of the American Union. The engines, cranes, and certain heavy equipment are owned by the Maritime Commission. More than 90 percent of all raw materials, consisting of coal, lumber, and other materials and supplies, are shipped to the Company's place of business from points outside the State of North Carolina. During the year 1943, the materials, supplies, and equipment bought and shipped from outside the State amounted in value to more than \$1,000,000, and during the first part of 1944, the materials, supplies, and equipment so bought and shipped were in like ratio to this amount.

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 is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Shipbuilders of America, Inc., is an unaffiliated labor organization, admitting to membership employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

The C. I. O., by letter dated April 1, 1944, notified the Company of its claim to represent a majority of the Company's employees in the appropriate unit, and requested a collective bargaining conference. The Company replied by letter dated April 10, 1944, refusing recognition on the ground that it believed that the C. I. O. did not, in fact, represent such a majority.

The Company contends that inasmuch as less than a year has elapsed since an election was conducted by the Board on September 3 and 4, 1943, in a prior proceeding,<sup>2</sup> wherein the C. I. O. sought to represent the Company's employees in substantially the same unit as that which it here alleges to be appropriate, no election should be held on the present petition. In that election a substantial majority of the votes were cast against representation by any of the participating unions. Nearly 10 months, however, have elapsed since the election, and the C. I. O. and the U. S. A. have submitted designations, all dated subsequent to the election of September 3 and 4, 1943, the total of which indicates that at the present time a majority of the Company's employees desire union representation.<sup>3</sup> We believe that the policies of the Act will best be effectuated by conducting an election on the present petition.<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.

#### IV. THE APPROPRIATE UNIT

The parties stipulated at the hearing that there has been no change in the circumstances affecting the classifications included in the unit which the Board found to be appropriate in Case No. R-5455 (5-R-1237), in which Decision and Direction of Election was issued on July 12, 1943,<sup>5</sup> and that such unit is here appropriate. However, all parties desire inclusion within the unit in the present case of orderlies in the clinic or medical department, material men, and tool keepers; and the Company and the U. S. A. seek to include, whereas the C. I. O. seeks to exclude, the classifications of messengers, material checkers, storekeepers, timekeepers, and piece-work counters. All of the foregoing categories, except material men, were either specifically excluded from the unit in Case No. R-5455 or fell within one of the general categories excluded therefrom.<sup>6</sup>

<sup>2</sup> *Matter of North Carolina Shipbuilding Company*, 51 N. L. R. B. 251.

<sup>3</sup> According to statements of the Field Examiner, introduced in evidence, and of the Trial Examiner and Attorney for the Board, read into the record at the hearing, the C. I. O. submitted 2,944 authorization cards purporting to bear the signatures of employees of the Company, dated during the months of January, February, and March 1944, together with a petition dated in February 1944, purporting to bear the signatures of 2,345 employees. The U. S. A. submitted authorizations purporting to bear the signatures of 1,991 employees of the Company, dated April 22, 24, 25, and 26, 1944. There are approximately 12,000 employees in the appropriate unit.

<sup>4</sup> See *Matter of Detroit Nut Company*, 39 N. L. R. B. 739; *Matter of New York Central Iron Works, Hagerstown, Maryland*, 37 N. L. R. B. 894.

<sup>5</sup> See footnote 2, *supra*.

<sup>6</sup> In Case No. R-5455, we found the following unit to be appropriate: all production and maintenance employees of the Company at its Wilmington, North Carolina, shipyards, including drivers in the transportation department, students and apprentices, but excluding supervisors of the rank of leadingman and above, blueprint, timekeeping, job training, piece-work counting, time-study, and plant-protection employees, progressmen,

*Orderlies in the medical department.*—Although all medical department employees were excluded from the unit previously found appropriate, janitors in this department, as well as in other departments, were included. The record in the instant case discloses that there are no janitors in the medical department other than the orderlies, who perform the duties of janitors. The record further discloses that, while on occasion they may assist in handling an injured employee and assist in the storage of medical supplies, the orderlies do not assist in the treatment of persons who require professional services of any nature in the clinic. We shall, therefore, in view of their janitorial functions, include orderlies in the unit.

*Material men* are employed in nearly all of the operating departments to follow up material and see that it is on hand for use by the mechanics. In cases in which the material is not too heavy to be handled by them, they deliver the material to the point where it is needed. Although material checkers were specifically excluded, as clerical employees, from the unit previously found to be appropriate, the classification of material men was not so excluded.<sup>7</sup> The record discloses that only a small portion of the duties of the material men is clerical, approximately 80 percent of their work consisting of physical labor. We shall include material men within the unit.

*Tool keepers* are stationed in the Company's toolrooms, and issue tools as they are needed by the mechanics, collect them after use, and keep them in repair. Although they are required to prepare a ticket for each tool that is issued, such duties of a clerical nature form only a small portion of their work. In our decision in Case No. R-5455 we excluded tool checkers from the unit, the record in that case indicating that the tool checkers and tool keepers were practically identical classifications, performing largely clerical duties. The record in the instant case, however, discloses that substantially the entire time of these employees is spent in physical labor. Their interests, therefore, appear to be in common with those of the production and maintenance employees. We shall, therefore, include tool keepers or checkers in the unit.

*Messengers, material checkers, storekeepers, timekeepers, piecework counters.*—In regard to these classifications, as to whose inclusion the parties are in disagreement, no sufficient reason is disclosed by the record in the instant case for departing from our previous finding that they should be excluded from the unit. The nature of their duties

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draftsmen, chemists, material and tool checkers, storekeepers, medical department employees except janitors, all other clerical and technical employees, 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.

<sup>7</sup> The record indicates, however, that the parties considered material men as having been excluded from the unit in the prior case.

is in each instance such as to indicate that these employees do not possess interests sufficiently in common with those of the production and maintenance employees to justify their inclusion in the unit. We shall, therefore, exclude them.

We find that all production and maintenance employees of the Company at its Wilmington, North Carolina, shipyards, including drivers in the transportation department, material men, tool keepers, or checkers, students and apprentices, but excluding supervisors of the rank of leadingman and above, blueprint, timekeeping, job training, piece-work counting, time-study, and plant-protection employees, messengers, progressmen, draftsmen, chemists, material checkers, storekeepers, medical department employees except orderlies whose functions are principally janitorial, all other clerical and technical employees 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 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 North Carolina Shipbuilding Company, Wilmington, North Carolina, 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 Fifth 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

<sup>8</sup> The parties respectively requested that their names appear on the ballot as follows: C I O., and U. S. A., Inc. These requests are hereby granted.

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 C. I. O., or by U. S. A., Inc., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.