

IN THE MATTER OF NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA—CIO

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Cases Nos. 5-R-1557 and 5-R-1579 respectively.—Decided August 4, 1944

Mr. William L. Ferguson, of Newport News, Va., and Mr. T. Justin Moore and Miss Sarah Geer Dale, of Richmond, Va., for the Company.

Mr. M. H. Goldstein, of Philadelphia, Pa., for the C. I. O.

Mr. A. L. Bivins, of Newport News, Va., and Mr. Frank A. Kearney, of Phoebus, Va., for the Association.

Mr. George Q. Lynch, of Washington, D. C., for the League.

Mr. Robert E. Tillman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon petitions duly filed by Industrial Union of Marine and Shipbuilding Workers of America—CIO, herein called the C. I. O., each alleging that a question affecting commerce had arisen concerning the representation of employees of Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Earle K. Shawe, Trial Examiner. Said hearing was held at Newport News, Virginia, on June 27, 28, and 29, 1944. The Company, the C. I. O., and Peninsula Shipbuilders' Association, herein called the Association, and Pattern Makers League of North America, herein called the League, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.¹ The rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby

¹ Although served with notice of the hearing, the American Federation of Labor advised the Trial Examiner that it did not desire to intervene in the proceedings.

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

Newport News Shipbuilding and Dry Dock Company, a Virginia corporation, has its principal place of business at Newport News, Virginia, where it is engaged in the construction and repair of naval and other vessels. At present, such construction and repair work is being done for the United States Navy and the War Shipping Administration. During the first half of 1944, raw materials and supplies having a value in excess of \$1,000,000 were shipped to the Company from points outside the State of Virginia.

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.

Peninsula Shipbuilders' Association is a labor organization associated with the East Coast Alliance, admitting to membership employees of the Company.

Pattern Makers League of North America is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

On February 14, 1944, the C. I. O. sought recognition from the Company as the collective bargaining representative of certain of its employees. The Company refused to extend recognition, questioning whether the C. I. O. represented a majority of the employees in its proposed units, and further questioning the appropriateness of such units.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in each of the units it alleges to be appropriate.²

² The Trial Examiner stated that, in connection with Case No 5-R-1557, the C. I. O. submitted to him 6764 authorization cards, all bearing apparently genuine original signatures, and petitions bearing 1491 apparently genuine original signatures, and that a spot check indicated that 5280 of the total 8255 signatures were names of persons whose names

We find that questions affecting commerce have 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

A. *The production and maintenance employees*

1: Contentions of the parties

The C. I. O. seeks a unit of all production and maintenance employees, excepting pattern makers, including those material men, storekeepers, and toolroom employees whose work consists of physically receiving, handling, and/or distributing materials and tools rather than record keeping or clerical functions, but excluding all supervisors of the grade of junior quartermaster and above, all clerical employees in the main administrative offices, in divisional and departmental offices, in timekeeper or weigh booths, in warehouses, store-rooms or elsewhere on the premises controlled by the Company, and all timekeepers, piece-work counters, time-study employees, apprentices, welding trainees, instructors, high school and college students hired for the summer, employees of the clinic (including the orderlies therein), office janitors, technical employees, draftsmen, and other administrative, accounting, and office personnel.

The Company and the Association contend that the unit covered by their contract is appropriate, namely, all employees, except (a) officers, superintendents, assistant superintendents, foremen, and assistant foremen; (b) employees, the nature of whose work is such that they are, in effect, representatives of management; and (c) pattern makers. The League is not seeking certification as the collective bargaining representative of the Company's pattern makers, but merely desires to have them excluded from any unit herein found to be appropriate.

The differences between the C. I. O., on the one hand, and the Company and the Association, on the other, arise from the latter's opposition to the C. I. O.'s proposed exclusions of the following categories of employees: timekeepers and piece-work counters; clerical employees; technical employees; orderlies in the clinic; office janitors;

appeared on the Company's pay roll for May 15 1944, which listed approximately 18200 employees in the production and maintenance unit alleged to be appropriate.

The Trial Examiner stated further that, in connection with Case No 5-R-1579, the C. I. O. submitted to him 79 authorization cards, all bearing apparently genuine original signatures, and that 59 of the 79 signatures were names of persons whose names appeared on the above-mentioned pay roll which listed approximately 215 employees in the plant protection unit alleged to be appropriate.

The Association relies upon a contract with the Company to show its interest. This contract covers the employees in the units alleged by the C. I. O. to be appropriate. However, both the Company and the Association stated that they were not raising the contract as a bar to these proceedings.

apprentices in the apprentice school; welding trainees; students hired for the summer;³ and plant-protection employees.

2. The Company's operations

The Company's only plant is located on a peninsula, where it covers approximately 239 acres. The plant is not what might be termed a mass-production yard, but is rather a specialized building yard concerned with the construction of large, complicated ships on order.

For administrative purposes, the Company's employees are divided into so-called operating employees and so-called general and service employees. The operating employees consist, in general, of the employees in the Company's five production divisions, plus a few small departments whose work is closely associated with that of the production divisions.⁴ The general and service employees include the personnel of the several office and administrative departments, drafting departments, laboratories, and other miscellaneous departments.

The Company employs approximately 17,600 employees within the unit alleged to be appropriate by the C. I. O. An additional 2,137 employees would be included in the unit which the Company and the Association regard as appropriate.

3. History of collective bargaining

In 1940, the Company recognized the Association as the representative of its operating and general and service employees on a members-only basis. The two parties executed their first contract on November 5, 1941, in which the Association was accorded exclusive collective bargaining rights for all employees, including apprentices, who were eligible for membership, but excluding pattern makers, specified supervisory employees, apprentice instructors, watchmen, employees in the Time-Study Department, Employment Office, and Medical Department, and confidential salaried employees. On June 1, 1943, the Company and the Association executed a supplemental contract covering all the employees in the unit which they now contend is appropriate, excepting plant-protection employees who were later included by agreement in August 1943. The contract was again extended in June 1944.

With respect to its pattern makers, the Company has bargained with the League since February 16, 1940, although no written contract has been executed.

³ Students hired for the summer are discussed in Section V, *infra*.

⁴ i. e. Dept. 053, Purchasing (hourly); Dept. 054, Transportation; Dept. 056, Lumber; and Dept. 058, Steel Storage Yard.

4. Disputed categories

The Company sought to prove at the hearing that the circumstances of this particular case warrant a departure from the Board's customary finding that a unit confined to production and maintenance employees is appropriate in shipyards. Thus, there is evidence in the record relating to the isolated geographical location of the Company's yard and the city of Newport News; to the dependency of the city of Newport News upon the yard, which is its sole major industry, to the homogeneous character of the Company's employees, who are drawn almost exclusively from residents of the State of Virginia, and to the closely-knit community life of the city of Newport News. While, under proper circumstances, these factors are to be considered in determining the appropriate unit, we are not persuaded that they should be controlling where the petitioning union has followed the customary pattern in the industry of establishing a production and maintenance unit. Nor do we consider the collective bargaining history of the plant to be controlling, inasmuch as the history did not develop as a result of a determination by this Board, and is not typical of the shipbuilding industry.⁵

Timekeepers and piece-work counters: The Company employs 285 timekeepers and 217 piece-work counters. Both groups of employees are in one department under the supervision of the chief timekeeper, and are salaried. Timekeepers assemble data necessary for computing weekly pay checks and for estimating the total cost of each individual ship. Approximately one-half the timekeepers work at points throughout the yard, while the other half occupy central headquarters in the machine shop building. The Company's piece-work counters perform counting work typical of such employees, devoting about 5 hours of their time to work in the yard and 3 hours to work in the office. We conclude from the above facts that the interests of timekeepers and piece-work counters are so closely related that they might be in the same unit for collective bargaining purposes. However, because of their clerical duties and their separate supervision, we shall not include them in the production and maintenance unit over the opposition of the petitioning union.⁶

Clerical employees: The Company's non-confidential clerical employees are found in several administrative departments in the main office building, in offices located in four of the five operating divisions, and in a number of general and service departments outside the main

⁵ See *Matter of Sharp & Dohme, Inc.*, 56 N. L. R. B. 1471; and *Matter of Boston Edison Company*, 51 N. L. R. B. 118, 121.

⁶ See *Matter of American Propeller Corporation, Toledo, Ohio, et al.*, 43 N. L. R. B. 518, 524; *Matter of Cramp Shipbuilding Company*, 37 N. L. R. B. 146, 150; and *Matter of North Carolina Shipbuilding Company*, 51 N. L. R. B. 251, 254-5.

office. In most instances, they are salaried employees. While the Board has on occasion included plant clericals in production and maintenance units when excluding office clericals, the record indicates that the Company's organizational setup is such that a division between plant clerical and office clerical employees would be wholly arbitrary. Thus, it appears that the employees in the four operating division offices are engaged in filing, typing, and stenographic work comparable to that in which employees in the main office building are engaged. Their interests are, therefore, more nearly identical to those of the main office employees than to those of the production and maintenance employees. Accordingly, we shall adopt, in part, the test suggested by the C. I. O., and include only those plant clerical employees who, as part of their work, physically receive, handle, and/or distribute materials or tools. Only two of the general and service departments, namely Dept. 053, Purchasing Storekeeping, and Dept. 069 Weight Office, appear to have such employees. We shall exclude main office clerical employees and all other clericals who are not engaged, as part of their work, in physically receiving, handling and/or distributing materials or tools.

Technical employees: The record indicates that the Company employs two general groups of employees who might be termed technical employees, namely, draftsmen and laboratory employees. We shall follow our customary practice and exclude both groups from the production and maintenance unit as employees whose work is of a technical and professional nature.⁷

Orderlies in the clinic: The Company employs a few orderlies in its clinic who perform such duties as administering heat treatments and giving massages. They are under the supervision of the Chief Surgeon. In conformity with our usual practice respecting employees in medical departments, we shall exclude orderlies from the unit, since they are not engaged in production and maintenance work.⁸

Office janitors: The Company employs 89 janitors, all of whom are assigned to a single department. The janitors service the main office building and other offices about the yard. The Company has no janitors to clean the production and maintenance departments. Since the work of the janitors is confined to the cleaning of offices, we shall exclude them from the production and maintenance unit.⁹

Apprentices: The Company conducts an apprentice school where employees who are enrolled are given academic schooling and practical training in the skills involved in shipbuilding. The course

⁷ See *Matter of The Brown Paper Mill Company, Inc.*, 45 N. L. R. B. 1227, 1229, 1231.

⁸ See *Matter of Belden Manufacturing Company*, 55 N. L. R. B. 413, and *Matter of The Brown Paper Mill Company, Inc.*, 45 N. L. R. B. 1227, 1230.

⁹ See *Matter of Ross-Mechan Foundries*, 44 N. L. R. B. 569, 571-2.

covers a period of 4 years for most apprentices and 5 years for draftsmen apprentices. An average of 6 hours per week is devoted to academic studies, and the remainder of the time is spent working with tools in the actual construction of ships. In the construction work, the apprentices work under separate supervision from that of regular employees for the first 2½ years. Thereafter, they work under the same supervision. The apprentices are paid while attending school and while working, starting at a beginner's rate and receiving periodic increases until they reach the journeyman rate. Although some apprentices may become supervisors prior to or after graduation, we do not consider this sufficient reason to exclude them from a unit of production and maintenance employees before they attain supervisory status. We are of the opinion that apprentices have interests akin to those of production and maintenance employees in selecting a collective bargaining representative, and we shall include in the unit those apprentices who are otherwise eligible for inclusion in the production and maintenance unit.

Welding trainees: The Company maintains a welding school for welding trainees, of whom it has 13. The trainees weld on scrap material in the school, since under governmental regulations, welders cannot engage in production unless and until they are certified as welders by virtue of passing specified tests. The trainees are paid an hourly rate and are under the supervision of instructors. Since the welding trainees are not engaged in production, as are the apprentices discussed above, we do not consider that they have a sufficient interest in the selection of a collective bargaining representative for production and maintenance employees to warrant their inclusion in the unit. We shall, therefore, exclude welding trainees from the unit.

5. Concluding finding

We find that all the production and maintenance employees of the Company, including apprentices, all material men, storekeepers, tool-room employees and plant clerical employees whose work consists, in part, of physically receiving, handling and/or distributing materials or tools, but excluding pattern makers,¹⁰ office clerical employees, other clerical employees not engaged, in part, in physically receiving, handling, and/or distributing materials or tools, timekeepers, piece-work counters, time-study employees, all draftsmen, laboratory employees, and other technical employees, orderlies in the clinic, office janitors, welding trainees, instructors, plant-protection employees,¹¹

¹⁰ The record indicates that the League represents substantially 100 percent of the Company's pattern makers. The parties all agree, and we find, that pattern makers should be excluded from the production and maintenance unit, in view of the claims and showing of interest of the League.

¹¹ A separate unit of plant-protection employees is hereinafter found to be appropriate.

all supervisory employees of and above the grade of junior quartermaster, and all other supervisory employees having the 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.

B. *The plant-protection employees*

The C. I. O. seeks a separate unit of all employees in the plant-protection department, namely guards, fire prevention employees, plant firemen, fire watchers, and roundsmen, but excluding all supervisory employees of and above the rank of sergeant. The Company and the Association contend that the plant-protection employees should be in a single plant unit, but apart from this, are not in disagreement with the C. I. O. as to the composition of the proposed unit.

The Company has 205 plant-protection employees, all in Dept. 029. Their duties include preservation of order and safety within the plant, direction of traffic, and protection against intrusions. They are uniformed, and approximately 25 percent of them are armed. Formerly, they were militarized. At present, they are deputized annually as special police officers of the city of Newport News.

We are of the opinion that the Company's plant-protection employees can best function as a separate bargaining unit.¹² Accordingly, we find that all employees of the Company in the plant-protection department, namely, guards, fire prevention employees, plant firemen, fire watchers, and roundsmen, excluding all supervisory employees of and above the rank of sergeant, and all other supervisory employees having the 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 questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.

Each summer, the Company hires several hundred high school and college students. The great majority of such students quit in August and September to return to school, and are hired with this expectation,

¹² See *Matter of Southern Bell Telephone and Telegraph Company*, 55 N. L. R. B. 1058.

although the Company would willingly retain them indefinitely in its employ. We regard those students who intend to return to school as having only a temporary employee status. As such, we find that they do not have a sufficient interest in the selection of a representative for collective bargaining purposes to be eligible to vote.¹³

DIRECTION OF ELECTIONS

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia, separate elections 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 units 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 elections, to determine whether they desire to be represented by Shipbuilders' Union—CIO, or by P. S. A., for the purposes of collective bargaining, or by neither.¹⁴

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

¹³ See *Matter of H. D. Oberdorfer and J. S. Oberdorfer, Partners, doing business under the name of New Castle Products*, 34 N. L. R. B. 683, 687, and *Matter of Oregon Plywood Company*, 33 N. L. R. B. 1234, 1237-8.

¹⁴ The C. I. O. and the Association expressed preferences at the hearing that their respective names appear on the ballots as set forth in the Direction of Elections.