

In the Matter of NORFOLK SHIPBUILDING & DRYDOCK CORPORATION and
INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF
AMERICA (C. I. O.)

Case No. 5-R-1627.—Decided August 8, 1944

Messrs. Leon T. Seawell and Crawford S. Rogers, both of Norfolk, Va., for the Company.

Messrs. William Smith and W. W. Murphy, both of Newport News, Va., for the CIO.

Mr. Dan A. Nottage, of Norfolk, Va., for the Council.¹

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Union of Marine and Shipbuilding Workers of America (C. I. O.), herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Norfolk Shipbuilding & Drydock Corporation, Norfolk, Virginia, herein called the Company; the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Norfolk, Virginia, on July 21, 1944. The Company, the CIO, and the Fifth Naval District Metal Trades Council, affiliated with the American Federation of Labor, herein called the Council, representing its affiliated unions, appeared, participated, and 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 Representatives of many of the labor organizations affiliated with the Fifth Naval District Metal Trades Council filed an appearance at the hearing, but took little or no active part therein.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Norfolk Shipbuilding & Drydock Corporation, a Virginia corporation, owns and operates a shipyard located in Norfolk, Virginia, hereinafter referred to as the Brambleton yard, and operates another shipyard under lease from the United States Navy, located at Berkley Ward, Norfolk, Virginia, hereinafter referred to as the Berkley yard. The Company is engaged, at both yards, in the repair of vessels for the United States Navy, United States War Shipping Administration, and the British Ministry of Shipping; it is also engaged at both yards, in the performance of private repair work. During the year 1943 the gross income of both yards exceeded \$11,000,000, more than 90 percent of which was in payment for work performed on vessels owned privately or by United States Government agencies, and engaged in interstate and foreign commerce. During the same period, approximately 10 percent of all raw materials used in both yards, consisting principally of steel, iron, timbers, and other shipyard repair material, originated from points outside the State of Virginia.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.²

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.

Fifth Naval District Metal Trades Council, representing its member labor organizations, is a labor organization affiliated with the Metal Trades Department of the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 9, 1944, the CIO requested recognition from the Company as the exclusive bargaining representative of certain of its employees. The Company refused to grant such recognition to the CIO, denying that the CIO represented a majority of the employees which it proposed to represent.

² See *Newport News Shipbuilding & Drydock Co. v. N. L. R. B.*, 101 F. (2d) 841.

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.³

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

Both labor organizations and the Company agree upon the propriety of a collective bargaining unit consisting of all production and maintenance employees of the Company, including transportation department employees, storeroom employees, timekeepers, plant protection employees, launch captains, fire watch employees, operators, trainees, canteen employees, gang pushers, and leadmen, but excluding office employees, technical employees, draftsmen, planners, inspectors, material clerks, clerical employees, dock masters, assistant dock masters, instructors, canteen manager, quartermen, and all other supervisory employees. A disagreement exists between both labor organizations and the Company in that the former contend that the Brambleton yard and the Berkley yard constitute a single unit, whereas the Company contends that each yard constitutes a separate unit.

As hereinbefore indicated, the Company operates two ship repair yards. The Brambleton yard, located within the city of Norfolk, is completely owned and operated by the Company; the grounds of the Berkley yard are owned by the Company, but the facilities thereon are leased by the Company from the United States Navy Department. The distance between the two yards is approximately 2 to 3 miles. Both yards perform similar work and have similar classifications of employees. The Berkley yard performs the major portion of repair work for governmental agencies, whereas the Brambleton yard performs the larger share of the private work. Both yards are permanent.

Each yard has its own purchasing department, personnel department, and supervisory hierarchy. On the other hand, the over-all supervision is centralized in the hands of the same president and general manager, the policies of the Company are uniform with respect to both yards, and the conditions of employment are similar in both. Furthermore, the Company apparently operates upon a company-wide seniority basis, and transfers of personnel between the two yards

³ The Field Examiner reported that the CIO submitted 1,081 designations bearing apparently genuine original signatures and that, as of June 25, 1944, the Company employed 2,887 employees in the unit alleged by the CIO to be appropriate. He further reported that the Council submitted 227 designations.

involve no loss of seniority for the transferred employee. Both yards may perform work upon the same vessel, although such work is performed upon a subcontract basis, each yard having its separate accounting system and billing the other for work performed upon such subcontract basis. In view of the permanent nature of both yards, the similarity of operations, their common ownership and proximity to each other, the company-wide seniority policy, and the organizing activities of the labor organizations among the employees of the Company, we are of the opinion and find that the employees in both yards constitute a single unit.

We note that all parties agree upon the inclusion of plant protection employees, timekeepers, leadmen, and gang pushers, within the appropriate unit. Despite this agreement among the parties we are of the opinion, for reasons hereinafter set forth, that such classifications should be excluded from the collective bargaining unit.

The plant protection employees are regular guards who wear uniforms, carry arms, and are deputized through the local police department. It has been our customary practice to exclude such employees from a production and maintenance unit.⁴ We shall, therefore, exclude them.

The timekeepers make records of the time of the men in the departments to which they are assigned and are responsible to the head timekeeper in the main office. We have previously stated, with respect to similar employees, that "the duties and interests of timekeepers being clerical in nature, are not sufficiently akin to those of production and maintenance employees . . . to warrant the inclusion of timekeepers within the same unit of such employees."⁵ We shall exclude the timekeepers.

Leadmen (leadingmen)⁶ and gang pushers supervise groups ranging from 4 to 17 employees. They are on a par with instructors whom all parties agree to exclude from the appropriate unit, and they attend staff meetings of persons whom the Company consider supervisors. The record discloses that both gang pushers and leadmen possess the authority to make recommendations affecting the status of employees under them. Under the circumstances, we find that they are supervisors, and shall exclude them.

In accordance with the foregoing, we find that all production and maintenance employees of the Company at its Brambleton and Berkley yards, including transportation department employees, storeroom employees, launch captains, fire watch employees, operators, trainees, and

⁴ *Matter of P. H. Hanes Knitting Company*, 52 N. L. R. B. 746

⁵ *Matter of General Motors Corporation, Eastern Aircraft, Trenton Division*, 51 N. L. R. B. 1366

⁶ This is the Company's designation for leadmen

canteen employees, but excluding office employees, technical employees, draftsmen, planners, inspectors, material clerks, clerical employees, timekeepers, plant protection employees, dock masters, assistant dock masters, instructors, canteen manager, quartermen, leadmen (leadingmen), gang pushers, and all 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.⁷

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Norfolk Shipbuilding & Drydock Corporation, Norfolk, Virginia, 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 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,

⁷ Although the Council did not present designations sufficient to warrant our finding that it has evidenced a substantial interest among the employees of the Company in the appropriate unit, we shall nevertheless grant it a place upon the ballot since an election is being conducted among such employees. The CIO requested that it be designated upon the ballot as "CIO," and the Council requested that it be designated thereon as "Metal Trades Department, AFL." Both requests are granted.

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 they desire to be represented by the CIO, or by Metal Trades Department, AFL, 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.