

In the Matter of DADE DRYDOCK CORP. and INDUSTRIAL UNION OF
MARINE & SHIPBUILDING WORKERS OF AMERICA—CIO

In the Matter of DADE DRYDOCK CORP. and OLIN H. STEVENSON, J. D.
STONER, AND JACK WALLWORK¹

In the Matter of DADE DRYDOCK CORP. and INDUSTRIAL UNION OF
MARINE & SHIPBUILDING WORKERS OF AMERICA—CIO

*Cases Nos. 10-R-1191, 10-R-1194 and 10-R-1259 respectively.—De-
cided October 7, 1944*

Mr. Paul S. Kuelthau, for the Board.

Messrs. Evans, Meshon, and Sawyer, by *Mr. Herbert S. Sawyer*, of
Miami, Fla., for the Company.

Mr. Edward C. Holman, of Miami, Fla., for the C. I. O.

Mr. Fred H. Kirtley, of Miami, Fla., for the Independent.

Mr. Paul Chipman, of Atlanta, Ga., and *Messrs. H. C. Summers* and
H. S. Davis, both of Miami, Fla., for the I. A. M.

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

DECISION
DIRECTION OF ELECTIONS
AND
ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Industrial Union of Marine & Ship-
building Workers of America—CIO, herein called the C. I. O., and
upon a petition filed on behalf of The Florida Independent Employees
Association, herein called the Independent, by Olin H. Stevenson, J. D.
Stoner, and Jack Wallwork, each alleging that a question affecting
commerce had arisen concerning the representation of employees of
Dade Drydock Corp., Dade County, Miami, Florida, herein called the

¹ Although the petition in Case No. 10-R-1194 was filed by the above-named individuals, the record clearly indicates that these persons were actually acting on behalf of The Florida Independent Employees Association, hereinafter referred to as the Independent, and that the participation of these individuals in this proceeding was in a representative capacity. Accordingly, we shall consider the Independent, rather than the named individuals, as the real party in interest.

Company, the National Labor Relations Board consolidated the cases by an order dated July 20, 1944, and provided for an appropriate hearing upon due notice before William J. Isaacson, Trial Examiner. The Notice of Hearing dated July 26, 1944, provided that, in addition to an investigation of the questions of representation, evidence was to be received upon the issue of "whether the Florida Independent Employees Association or Olin H. Stevenson, J. D. Stoner and Jack Wallwork, is a successor to, or a continuation of Employees Protective Association of Dade Drydock Corp.,² heretofore disestablished by the National Labor Relations Board and the United States Circuit Court of Appeals for the Fifth Circuit."³ Said hearing was held at Miami, Florida, on August 17 and 18, 1944. The Company, the C. I. O., the Independent, and International Association of Machinists (A. F. of L.), herein called the I. A. M., 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 Independent objected at the hearing to the reception of evidence pertaining to the issue of successorship. It further objected to the introduction into evidence of the stipulation of May 5, 1944, which provided for the disestablishment of the Association. The objections of the Independent were based upon the fact that it had been informed by the Company that unfair labor practice charges, alleging, *inter alia*, that the Company had violated Sections 8 (1) and (2) of the National Labor Relations Act, filed by the C. I. O.,⁴ had been withdrawn. The Trial Examiner overruled the objections of the Independent.⁵ The Trial Examiner's

² We shall refer to this organization hereinafter as the Association.

³ On May 5, 1944, the Company, the C. I. O., and an agent of the Board executed a stipulation providing, *inter alia*, that the Board may enter an order providing that (a) the Company shall cease and desist dominating or interfering with the administration of the Association and giving effect to the collective bargaining agreement currently operative between them, and (b) the Company shall withdraw and withhold recognition from the Association as the collective bargaining representative of its employees and completely disestablish it as such representative. The stipulation further provided that, upon application by the Board, the United States Circuit Court of Appeals for the Fifth Circuit, or any other appropriate court, may enter its decree enforcing the Order of the Board.

On May 23, 1944, the Board issued its Decision and Order in *Matter of Dade Drydock Corp.*, Case No. 10-C-1340, unpublished, in which, *inter alia*, it ordered that the Company completely disestablish the Association as the collective bargaining representative of its employees.

On May 30, 1944, the United States Circuit Court of Appeals for the Fifth Circuit entered a consent decree providing, *inter alia*, that the Company completely disestablish the Association as the collective bargaining representative of its employees.

⁴ *Matter of Dade Drydock Corp.*, Case No. 10-C-1574. The C. I. O.'s charges were based, in part, upon the allegation that the Independent was a successor to, or a continuation of, the Association previously ordered disestablished.

⁵ The Trial Examiner based his ruling with respect to these objections upon the fact that the notice of withdrawal of the unfair labor practice charges against the Company in Case No. 10-C-1574 in nowise affected the issues to be litigated in the instant representation proceeding, since (a) the Notice of Hearing in the instant case specifically stated that evidence would be adduced with respect to the issue of successorship, and (b) said Notice had not been amended. The propriety of adducing evidence with respect to successorship is well established. See *Matter of Dow Chemical Co.*, 32 N. L. R. B. 660; *Matter of R. G. LeTourneau, Inc.*, 36 N. L. R. B. 774; *Matter of H. E. Fletcher Company*, 41 N. L. R. B.

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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Dade Drydock Corp., a Florida corporation, is engaged at Miami, Florida, in the repair and conversion of naval vessels, and in the operation of a floating drydock belonging to the United States Navy. Approximately 95 percent of the repair and conversion work of the Company is performed pursuant to contracts with the United States Navy and Maritime Commission. The vessels which are repaired and converted are delivered to these agencies for use in the war effort and in the transportation of goods between ports in various States and Territories of the United States and foreign countries. In addition, a large portion of the Company's business is transacted with common carriers engaged in the transportation of freight and cargo. At least 15 percent of the raw materials used by the Company in its repair and conversion operations is purchased by it from points outside the State of Florida.

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

International Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

The Florida Independent Employees Association is an unaffiliated organization, admitting to membership employees of the Company.

420, *Matter of J. Greenebaum Tanning Company, Plant No 3*, 49 N. L. R. B. 787; *Matter of New York Merchandising Company, Inc*, 51 N. L. R. B. 41.

The record indicates that all possible steps were taken to afford the Independent an opportunity to meet this issue. The Board's attorney offered to consent to an adjournment after the Trial Examiner indicated that he would overrule the objections. This offer was not accepted by Mr. Kirtley, counsel for the Independent. Instead, Mr. Kirtley requested a short recess, at the end of which he announced that he would no longer participate in the proceeding. The Trial Examiner asked him whether or not he desired an adjournment. Instead of replying, Mr. Kirtley left the room and took no further part in the proceeding. Whereupon the Trial Examiner again offered to adjourn the hearing in order that new counsel might be obtained for the Independent. The offer was refused by Messrs. Stevenson, Etoner, and Wallwork. This offer was repeated several times thereafter, and in each instance, a representative of the Independent stated that he preferred to continue the present hearing.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to recognize any labor organization as the collective bargaining representative of its employees in the absence of certification by the Board.

As previously indicated, on May 23, 1944, the Board issued an Order in Case No. 10-C-1340, providing, *inter alia*, that the Company withhold recognition from and completely disestablish the Association, and post notices to this effect. As stated above, evidence was received at the hearing herein on the issue of whether the Independent is the successor to, or continuation of, the Association, the organization heretofore ordered disestablished. We turn, therefore, to a consideration of the evidence bearing on this issue.

The Trial Examiner's Intermediate Report in the above-mentioned case was issued on February 18, 1944. Sometime thereafter, but before the issuance of the Board's Decision and Order on May 23, the president of the Association, Stevenson, conferred with Kirtley, its attorney, with respect to the Association's future conduct regarding that proceeding. It was decided at this conference to form a new organization "along similar lines to the [Association]" rather than to spend money in order to litigate the case further. In accordance with this decision, Kirtley framed an authorization to be distributed among and signed by the employees of the Company. This document authorized Stevenson, Stoner, and Wallwork⁶ to act on behalf of the signing employees in performing all matters necessary to form the Independent; it further authorized the three designees to act as the collective bargaining agents of the signatories.⁷ On April 11, Stevenson, with the

⁶ Stevenson and Wallwork were stewards of the Association at this time.

⁷ The following is a facsimile of said authorization:

MIAMI, FLORIDA, April 11, 1944.

WHEREAS, a Trial Examiner of the NLRB has made a recommendation that The Employees Protective Association of Dade Dry Dock Corp., should be disestablished, and the undersigned employee of Dade Dry Dock Corp., desires to be a member of an independent union consisting of at least a majority of all employees of said Corporation, save and except all employees in a supervisory capacity, which is not, and shall not, in any manner be dominated or controlled by said Corporation, for the purpose of collective bargaining for all of said employees of said Corporation, in all matters relating to wages, hours and conditions of working and employment.

NOW THEREFORE, the undersigned hereby authorizes, empowers and directs the following named persons;

Olin H. Stevenson
J. D. Stoner
Jack Wallwork

for and on behalf of the undersigned to do all things necessary and incidental for the purpose of organizing an independent union to be known as The Florida Independent Employees Association, and said persons above named to act for and on behalf of the undersigned, and said The Florida Independent Employees Association, as his and its collective bargaining representatives with said Corporation, and immediately upon a majority of the said employees of said Corporation executing an authority of like nature, said persons herein named shall at once act as, and be, said bargaining agents, and forthwith submit a constitution and by-laws of said The Florida Independent Employees Association to said employees which the undersigned hereby agrees to abide by, upon

permission of his foreman, left work before quitting time in order to distribute these authorizations to the employees of the Company outside the plant gate.⁸ He was assisted by Stoner, Wallwork, and several other employees, some of whom held important positions in the Association. The extent of Stevenson's solicitation activities on behalf of the Independent is demonstrated by the fact that he secured and witnessed the signatures of over 200 employees. On the same day, Stevenson rented a hall, which had been customarily used by the Association as its meeting place, for the purpose of having a place in which to answer inquiries of the employees with respect to the proposed formation of the Independent.⁹ He admittedly pointed out to employees who made inquiry, the expense involved in contesting the Trial Examiner's findings with respect to the Association. In this manner, Stevenson, and the employees who assisted him, soon secured the signatures of a majority of the Company's employees upon the authorization.

Sometime prior to April 21, 1944, Kirtley prepared for the signatures of Stevenson, Stoner, and Wallwork a letter requesting a meeting with the Company. This letter, dated April 21, was delivered on that date to Alexander M. Balfe, the president of the Company, through the inter-office mail. On the following day a conference was held in Balfe's office. Present at this conference were Stevenson, Stoner, Wallwork, and Kirtley, representing the Independent; Balfe; Kenneth Gardner, the Company's labor management director; Herbert S. Sawyer, attorney for the Company; and a conciliator from the United States Conciliation Service. The Independent's representatives asked that the Company recognize it as the collective bargaining representative of the Company's employees, and offered to submit as proof of their majority claim the authorizations hereinabove referred to. Sawyer rejected the demand, asserting that the Company would not recognize any labor organization in the absence of certification by the Board. On the same day, Stevenson, as president of the Association, executed an agreement with the Company, which was witnessed by Kirtley, the Association's attorney, abrogating the existing collective bargaining contract between the Company and the Associa-

the same being adopted for said The Florida Independent Employees Association by a majority of persons executing an instrument similar hereto, but in any event, the persons herein designated as bargaining representatives shall act as such from and after a majority of said employees of said Corporation have executed their consent for them so to act.

Witness

Capacity employed _____

⁸ It is evident from the record, however, that Stevenson's foreman had no knowledge of why Stevenson desired to leave early.

⁹ The cost of the authorizations as well as that of other literature distributed under the sponsorship of Stevenson, and the rental of the hall, was defrayed by Stevenson out of his own funds.

tion. That same evening, at a meeting of the Association's members presided over by Stevenson, Kirtley addressed the gathering and advised that the Association dissolve. Those assembled thereupon voted to dissolve the Association.

Subsequent to May 23, 1944, the date of issuance of the Board's Decision and Order in Case No. 10-C-1340, the Company posted the notices required by the terms of that Decision and Order.

The Independent held no meeting of its membership and did not elect officers. It printed no membership cards, collected no dues, did not draft or adopt a constitution or bylaws, and engaged in no activities on company time or premises.

Upon the foregoing facts, it is apparent that the Independent's successorship to the Association is established. It is clear that where, as here, an organization is the direct outgrowth of a predecessor organization which has been ordered disestablished by the Board, it is necessary that there be a complete fracture between the two organizations, and the employer is required to take positive steps to disabuse the employees generally of any belief which they may have that the employer favors the successorship organization as it favored the predecessors.¹⁰ The "absolute and public cleavage"¹¹ required is plainly absent in this case. On the contrary, before the Company posted the notices required by the Board's Decision and Order, and before the dissolution of the Association, its president, attorney and two of its stewards, as well as several other employees who were active in behalf of the Association, organized and formed the Independent, solicited memberships in its behalf, and sought recognition from the Company as the collective bargaining representative of all the Company's non-supervisory employees. It was only after the Independent was created and organized and attempted to function as a collective bargaining representative that the Association was dissolved at the urging and under the direction of the identical persons, Kirtley and Stevenson, who guided the formation and organization of the Independent. In these circumstances, we find that the Independent is merely a continuation of and successor to the Association, the organization which the Board ordered disestablished. It follows that the Independent is incapable of acting as the representative of the Company's employees for the purposes of collective bargaining. Its petition for investigation and certification will, therefore, be dismissed.¹²

¹⁰ E. g., *N. L. R. B. v. Southern Bell Telephone and Telegraph Co.*, 319 U. S. 50; *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657, 660 (C. C. A. 2), affirmed 312 U. S. 660; *N. L. R. B. v. Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241, 250; *International Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, 78-79; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 598; *N. L. R. B. v. Thompson Products, Inc.*, 130 F. (2d) 363, 367-368 (C. C. A. 6); *Roebling Employees Association v. N. L. R. B.*, 120 F. (2d) 289, 294-295 (C. C. A. 3).

¹¹ *Western Union Telegraph Co. v. N. L. R. B.*, 113 F. (2d) 992, 996 (C. C. A. 2).

¹² See cases cited in footnote 5, *supra*.

Statements of a Field Examiner for the Board, introduced into evidence at the hearing, indicate that the C. I. O. represents a substantial number of employees in each unit—hereinafter found appropriate.¹³

We find that, with respect to Cases Nos. 10-R-1191 and 10-R-1259, 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 UNITS

The C. I. O. seeks two units of employees of the Company, one consisting of all production and maintenance employees, including leadmen,¹⁴ truck drivers, storeroom clerks, toolroom clerks, receiving clerks, and checkers, but excluding office and clerical employees, guards, expeditors, assistant expeditors, and all other supervisory employees, and the other comprised of all guards,¹⁵ except the captain. The I. A. M. does not dispute the propriety of these units, and the Company's position is neutral.

In view of the absence of opposition by either the I. A. M. or the Company,¹⁶ and upon the entire record in the case, we find the follow-

¹³ Case No. 10-R-1191 (production and maintenance).

The Field Examiner reported that the C. I. O. submitted 160 valid designations bearing signatures of persons appearing upon the Company's pay roll of May 7, 1944, and that an additional 21 designations submitted by the C. I. O. were signed by persons subsequent to the date of that pay roll. Said pay roll contained 605 names of employees in this unit. He further reported that the I. A. M. submitted 31 valid designations bearing signatures of persons in this unit appearing upon the afore-mentioned pay roll.

At the hearing, the Trial Examiner reported that the I. A. M. submitted 16 additional valid designations containing names of persons in this unit appearing upon the afore-mentioned pay roll. In view of the presence of an organization which we find to be a successor to, or continuation of, a labor organization previously ordered disestablished, we find that the showing of the C. I. O. is sufficient to warrant the entertainment of this proceeding. Cf. *Matter of Humble Oil & Refining Company*, 53 N. L. R. B. 116, and cases cited therein.

¹⁴ Case No. 10-R-1259 (guard unit).

The Field Examiner reported that the C. I. O. submitted 7 valid designations of persons appearing upon the afore-mentioned pay roll, and that said pay roll contained the names of 18 employees in this unit.

The Trial Examiner reported that the I. A. M. submitted at the hearing 8 valid designations containing signatures of persons in this unit appearing upon the afore-mentioned pay roll.

¹⁵ There is no evidence indicating that leadmen are supervisory employees within the meaning of the Board's customary definition, and the parties agree to their inclusion.

¹⁶ The guards of the Company wear uniforms.

¹⁷ The Independent sought a single unit comprised of all non-supervisory employees of the Company, including guards, and office and clerical employees. Since we have found above that the Independent is a successor to, or continuation of, a labor organization previously ordered disestablished by the Board, we shall not give weight to its contention. In any event, we have excluded guards and office and clerical employees from production and maintenance units despite contentions to the contrary which we have considered. See *Matter of Cannon Manufacturing Corporation and Cannon Electrical Development Company*, 46 N. L. R. B. 592.

ing units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All production and maintenance employees of the Company, including leadmen, truck drivers, storeroom clerks, toolroom clerks, receiving clerks, and checkers, but excluding office and clerical employees, guards, expeditors, assistant expeditors, 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; and

2. All guards employed by the Company excluding the captain, 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.

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.¹⁷

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 Dade Drydock Corp., Dade County, Miami, Florida, 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 Tenth 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

¹⁷ The C. I. O. requested that it be designated upon the ballot in each election as "CIO," and the I. A. M. requested that it be designated thereon as "International Association of Machinists (A. F. of L.)." Both requests are hereby granted.

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 elections, to determine whether they desire to be represented by the CIO or by International Association of Machinists (A. F. of L.), for the purposes of collective bargaining, or by neither.

ORDER

The National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Dade Drydock Corp., Dade County, Miami, Florida, filed in Case No. 10-R-1194 by Olin H. Stevenson, J. D. Stoner, and Jack Wallwork, be, and it hereby is, dismissed.

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