

In the Matter of ODENBACH SHIPBUILDING CORPORATION and METAL  
TRADES DEPARTMENT, A. F. OF L.

*Case No. 3-R-867.—Decided October 18, 1944*

*Mr. Charles D. Mercer*, of Rochester, N. Y., for the Company.

*Messrs. Ray Oberholtzer and H. I. Smith*, of Buffalo, N. Y., for the  
Union.

*Mr. Robert Silagi*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Metal Trades Department, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Odenbach Shipbuilding Corporation, Greece, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Rochester, New York, on September 18 and 19, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.<sup>1</sup> During the course of the hearing the Company moved the dismissal of the petition. The Trial Examiner reserved ruling on the motion for the Board. For the reasons stated hereinafter, the 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 an opportunity to file briefs with the Board.

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<sup>1</sup> By a document dated August 24, 1944, the Union waived its rights to protest any election, if ordered, based upon certain pending charges of unfair labor practice.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

Odenbach Shipbuilding Corporation, a New York corporation, operates a shipyard near Rochester, New York, where it is engaged in the construction of gasoline tankers. During the year ending July 1, 1944, the Company used raw materials valued in excess of \$1,000,000, more than one-third of which represents shipments made to the Company's shipyard from points outside the State of New York. All tankers are constructed on behalf of, and are delivered to, the United States War Department. The facilities of the Company are owned by the Defense Plant Corporation, however all raw material used in the manufacture of the ships is the property of the Company. The Company maintains its own personnel office and has sole authority to hire and discharge employees. All salary checks are issued by the Company.

We find, contrary to the Company's contentions, that it is engaged in commerce within the meaning of the National Labor Relations Act.<sup>2</sup>

### II. THE ORGANIZATION INVOLVED

Metal Trades Department, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

### III. THE QUESTION CONCERNING REPRESENTATION

On August 15, 1944, the Union notified the Company that it represented a majority of its employees and requested a conference for the purpose of negotiating with respect to labor matters. The Company failed to reply to the Union's notification and request. The Company contends that the petition is premature and should therefore be dismissed. We find no merit to this contention. The last election conducted for the Company's employees in which an affiliate of the petitioner participated was held more than a year ago. The Union presently purports to represent over a majority of the employees within the appropriate unit. We therefore perceive no reason for delaying the instant proceedings.<sup>3</sup>

<sup>2</sup> See *Matter of Odenbach Shipbuilding Company*, 47 N. L. R. B. 1261, wherein we previously found the Company to be within the Board's jurisdiction. See also *Matter of Brown Shipbuilding Company, Inc.*, 57 N. L. R. B. 326.

<sup>3</sup> See *Matter of Detroit Nut Company*, 39 N. L. R. B. 739, and cases cited therein.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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.

#### IV. THE APPROPRIATE UNIT

The Union seeks a unit comprising the following employees of the Company: all production and maintenance employees, including stock chasers, tool and stockroom attendants, but excluding clerical and office employees, guards, foremen, assistant foremen, and gang leaders. The Company agrees that the unit requested is appropriate, but denies that gang leaders are supervisory employees who, as such, should be excluded from the unit.

The Company's supervisory hierarchy consists of a general factory manager, a plant superintendent, departmental superintendents, and foremen. The Union contends that the gang leaders are a part of that hierarchy, who in reality are assistant or subforemen and receive a higher wage rate than production employees. The Company states that they are merely skilled workmen who lay out work and assist others, but who devote most of their time to straight production work. The record reveals that gang leaders work approximately 80 percent of the time and spend only 20 percent of their time laying out work and assisting others. The evidence with respect to the authority of gang leaders is conflicting since their duties and functions vary with the nature of their work and the department in which they are employed. However, the authority to hire and discharge is vested in supervisors of the rank of foremen and above, and only upon rare occasion, in the absence of those supervisors, have applicants for jobs been referred to gang leaders for interview. Wage increases are granted upon the recommendation of the foremen together with the approval of the plant personnel manager. Gang leaders have no authority to make recommendations concerning wage increases. Under these circumstances, we are of the opinion that they perform no supervisory duties or functions within our customary definition, and accordingly, we shall include them in the unit.<sup>5</sup>

<sup>4</sup> The Field Examiner reported that the Union submitted 444 designations variously dated between April and August 1944. There are approximately 800 employees within the unit petitioned for.

<sup>5</sup> See *Matter of Duval Texas Sulphur Company*, 53 N. L. R. B. 1387. We note that in the previous case, footnote 2, *supra*, the Board, in accordance with a stipulation of the parties, included gang leaders within the appropriate unit.

We find that all production and maintenance employees of the Company, including gang leaders, stock chasers, tool and stockroom attendants, but excluding clerical and office employees, guards, assistant foremen, foremen, 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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 Odenbach Shipbuilding Corporation, Greece, New York, 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 Third 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, 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 Metal Trades Department, A. F. of L., for the purposes of collective bargaining.

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