

In the Matter of SUN SHIPBUILDING & DRY DOCK COMPANY and SUN SHIP EMPLOYEES ASSOCIATION, INC.

Case No. 4-R-1566.—Decided December 1, 1944

Mr. Sylvan H. Hirsch, of Philadelphia, Pa., and Mr. John G. Pew, of Chester, Pa., for the Company.

Messrs. Guy W. Davis and Guy G. DeFuria, of Chester, Pa., for the Employees Association.

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

Mr. James A. Cochrane, of Chester, Pa., and Mr. John J. Tague, of Philadelphia, Pa., for the Supervisors Association.

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by Sun Ship Employees Association, Inc., herein called the Employees Association, alleging that a question affecting commerce had arisen concerning the representation of employees of Sun Shipbuilding & Dry Dock Company, Chester, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Melton Boyd, Trial Examiner. Said hearing was held at Chester, Pennsylvania, on November 3, 1944. The Company, the Employees Association, Industrial Union of Marine and Shipbuilding Workers of America, and its Local No. 2, C. I. O., herein collectively referred to as the C. I. O., and Shipbuilding Supervisors Association, Unit #1, herein called the Supervisors Association, 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. At the hearing, the C. I. O. moved to dismiss the petition. The Trial Examiner referred the motion to the Board for determination. For reasons set forth in Section III, *infra*, the motion is denied. The Trial Examiner's rulings made at the hear-

59 N. L. R. B., No. 144.

ing 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

Sun Shipbuilding & Dry Dock Company, a Pennsylvania corporation, has its principal place of business at Chester, Pennsylvania, where it operates a shipyard and is engaged in the construction and repair of ships. During the fiscal year preceding the date of the hearing, its volume of business was in excess of \$150,000,000. During that period more than one-half its raw materials was received from points outside the State of Pennsylvania, and during the same period more than one-half of its finished products was shipped to points outside that State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Sun Ship Employees Association, Inc., is a labor organization admitting to membership employees of the Company.

Industrial Union of Marine and Shipbuilding Workers of America, and its Local No. 21, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

Shipbuilding Supervisors Association, Unit #1, is a labor organization admitting to membership employees of the Company.¹

III. THE QUESTION CONCERNING REPRESENTATION

Immediately following June 30, 1943,² and repeatedly thereafter, the Employees Association requested the Company to recognize it

¹ The constitution of the Supervisors Association, introduced into evidence at the hearing, states that "the object of this organization shall be to more closely unite the supervisors of Sun Shipbuilding Company for the common benefit of all: to disseminate useful information, to encourage relations of goodwill and respect among supervisors, men, and management." It also states that "all supervisors, up to but not including General Foremen, shall be eligible for membership." The record also discloses that an amendment to the constitution, empowering the Supervisors Association "to act as collective bargaining agent pertaining to wages, hours, working conditions and seniority" was formally approved at a membership meeting on October 2, 1944, and was scheduled for final approval at two subsequent scheduled meetings. We find that the Supervisors Association is a labor organization within the meaning of the National Labor Relations Act. See *Matter of Soss Manufacturing Company, et ano.*, 56 N. L. R. B. 348.

² On June 30, 1943, after a consent election, the C. I. O. was designated as exclusive representative of the employees involved herein. The Employees Association disputed the validity of that election and its action at law to set it aside is still pending in a Pennsylvania State Court.

as the exclusive representative for the employees in the unit set forth in the petition herein. On September 23, 1944, the Employees Association made the same demand upon the Company by letter and requested that the Company refrain from renegotiating its contract with the C. I. O.³ Advised of the petition herein, filed on October 4, 1944, the Company replied on October 5, that it would not renegotiate its contract with the C. I. O.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Employees Association represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 Company, the Employees Association, and the C. I. O. are in apparent agreement concerning the composition of an appropriate unit. The Supervisors Association states that its interest in this proceeding is to urge the exclusion of leaders from the unit proposed by the other parties, and it contends that leaders constitute a separate unit apart from the Company's remaining employees because leaders are in fact related to management rather than to production workers.

Leaders direct the work of gangs comprised of 6 to 12 men and distribute their time as recorded and charged to various operations. They are paid 20 cents per hour more than the highest craft rate and ordi-

³ On November 15, 1943, the Company and the C. I. O. made a collective bargaining agreement concerning the employees involved herein. The contract was for a term of 1 year and provided for automatic renewal for yearly periods unless either party gave notice to terminate 30 days prior to any anniversary date. This agreement is not raised as a bar to the instant proceeding.

⁴ The Field Examiner reported that the Employees Association submitted 9,845 signatures on authorization cards and petitions, and that on October 7, 1944, there were 25,083 employees in the alleged appropriate unit. The cards and petitions were dated as follows: 1942, April to December, 138; 1943, January 1 to June 30, 2,775; 1943, July 1 to December 31, 543; 1943, no month specified, 3,505; 1944, February to October, 592; and 1944, no month specified, 2,292. At the hearing, the Employees Association submitted 85 additional designation cards which bore apparently genuine signatures. Of all the signatures submitted, 1,455 are on petitions dated 1944. The remainder are signatures on cards authorizing the Employees Association "as my sole representative in collective bargaining . . . for a period of 1 year from above date, and agree to pay 50 cents to cover dues." The Field Examiner also reported that the Employees Association submitted its secretary's affidavit attesting that all its membership cards dated 1943 and 1944 bear signatures of members in good standing on October 30, 1944. The C. I. O. contends that the Employees Association has made an insufficient showing of current representation and that the petition should theretofore be dismissed. In view of all the foregoing facts and since the 1943 contracts required maintenance of membership in the C. I. O., we find no merit in the C. I. O.'s contention.

The C. I. O. relies upon its 1943 contract to show its interest in this proceeding.

At the hearing the Supervisors Association submitted to the Trial Examiner 440 membership cards bearing apparently genuine signatures of leaders and assistant foremen in the Company's employ. It also offered for inspection its membership books purportedly showing that about 800 additional employees of the Company were its members.

narily do no actual production work. Frequently they are reduced to craft work, as the Company's operations change, during which periods their hourly rate differential is not paid. After some disagreement concerning the powers of leaders to recommend changes in the status of employees, the parties, including the Supervisors Association, agreed that "leaders have no authority to hire, fire, transfer, promote, or discipline men who work in the gangs under them; such action is taken by the assistant foreman or foreman over the leader, after receiving the report of the leader and after, in practically all cases, making their own investigation of the facts so reported." Under these circumstances, we are of the opinion that leaders are not supervisory employees and have essentially the same interests as production employees. We shall include them in the appropriate unit.⁵

We find that all production and maintenance employees of the Company, including leaders, piece-work counters, timekeepers, guards and clerical employees in the yards and shops, but excluding foremen, assistant foremen, quartermen, captains of guards and their superiors, employees in the main offices, employees in the contract office (i. e., employees upon the pay roll of Department 91, whose work is in connection with the bonus contracts of other employees), draftsmen, employees of the medical and first-aid stations, employees paid on a salary basis 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.⁶

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.⁷

⁵ Since 1937, leaders have been included in all the Company's collective bargaining agreements covering the employees involved in this proceeding.

⁶ This is substantially the same unit covered by collective bargaining agreements between the Company and the Employees Association from 1937 to 1943, defined in the consent election of 1943 (see footnote 2, *supra*), and covered by the 1943 contract between the Company and the C. I. O. Except for the Supervisors Association, the parties were in agreement upon this unit throughout the hearing. At the end of the hearing, counsel for the C. I. O. suggested a slight modification in the language describing the unit. The proposal seemingly varied the date for determining the eligibility for voting with respect to certain employees. The parties disagreed upon the meaning of the new wording, and the suggestion was not urged further. From the entire record, it is clear that the unit as set forth herein reflects the actual agreement of the Company, the Employees Association and the C. I. O.

⁷ We shall place the C. I. O. on the ballot as "Industrial Union of Marine and Shipbuilding Workers of America, Local No. 2, affiliated with the Congress of Industrial Organizations."

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 Sun Shipbuilding & Dry Dock Company, Chester, Pennsylvania, 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 Fourth 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 the 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 they desire to be represented by Sun Ship Employees Association, Inc., or by Industrial Union Marine and Shipbuilding Workers of America, Local No. 2, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.