

In the Matter of **INGALLS SHIPBUILDING CORPORATION** and **INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O.**

Case No. 10-R-1325.—Decided December 13, 1944

Mr. D. W. Strickland, of Birmingham, Ala., for the Company.

Mr. W. M. Thompson, of Decatur, Ala., for the C. I. O.

Mr. C. L. Riley, of Birmingham, Ala., for the A. F. L.

Mr. Jack Mantel, 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 C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Ingalls Shipbuilding Corporation, Decatur, Alabama, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Mortimer H. Freeman, Trial Examiner. Said hearing was held at Decatur, Alabama, on November 10, 1944. The Company, the C. I. O., and International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, A. F. of L., herein called the A. F. L., 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 A. F. L. moved to dismiss the petition on the ground that its contract with the Company constituted a bar to this proceeding. The Trial Examiner referred the motion to the Board. The motion is hereby denied for the reasons hereinafter set forth. 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.

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

59 N. L. R. B., No. 177.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Ingalls Shipbuilding Corporation is a Delaware corporation having its general office and principal place of business in Birmingham, Alabama. At its shipyard in Decatur, Alabama, the Company is engaged in the construction of ships, tankers, towboats, barges, pontoons, and general floating equipment. During the 12 months preceding November 1944, the Company's Decatur shipyard purchased raw materials consisting chiefly of iron, steel, machinery, boilers, and electrical and joiner equipment, valued in excess of \$5,000,000, of which amount approximately 50 percent was shipped to its Decatur shipyard from points outside the State of Alabama. During the same period, the Company manufactured, sold, and delivered a certain number of ships valued in excess of \$10,000,000, which were constructed for the United States Maritime Commission and the United States War Department.

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

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company and the A. F. L. signed a 1-year collective bargaining contract on November 9, 1944, which was retroactive as of May 1, 1944. The retroactive feature was in accordance with a final order of the National War Labor Board, issued on November 4, 1944, relative to wages and work classifications. The C. I. O. filed its petition herein on September 27, 1944, and by letter dated October 3, 1944, requested the Company for recognition as the bargaining representative of its employees. The Company made no reply to the letter. In support of its motion to dismiss the petition, the A. F. L. claims as a bar to this proceeding, its contract signed on November 9, 1944, which was an extension of a contract entered into with the Company in October 1941. The A. F. L. has had contractual relations with the Company for over 3 years and has obtained for the employees the benefits of representation throughout that period. In this respect the A. F. L. is not in the position of a newly certified representative which is entitled

to a reasonable opportunity to act as the exclusive bargaining representative for the employees. Moreover, since the record shows that the C. I. O.'s petition was filed, and the request for recognition was made, prior to the signing of the contract on November 9, 1944, we are of the opinion that the contract does not constitute a bar to a present determination of representatives for the purposes of collective bargaining.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.²

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 parties are in general agreement that all employees of the Company, including working leadermen, but excluding timekeepers, office and clerical employees, supervisory leadermen, and all other supervisory employees constitute an appropriate bargaining unit. They are in dispute, however, concerning guards, whom the Company and the A. F. L. would exclude from the unit, and the C. I. O. would include.

The Company employs approximately 30 guards whose duties are to police the plant; maintain order; check employees going in and out of the plant; enforce rules and regulations relating to safety, gambling, drinking on the job, and other plant regulations; they are authorized to remove an employee from the plant for violation of the rules, such as gambling or drinking on the job. They carry arms and are deputized by the county sheriff. It is the policy of the Board to exclude from units of production and maintenance employees plant-protection employees who are deputized by the local authorities, carry arms, and perform monitorial duties, such as described above, since such employees may be required to assume a position adverse to that of the ordinary production and maintenance employees. We shall therefore exclude the guards.

We find that all production and maintenance employees of the Company at the Decatur, Alabama, shipyard, including working leadermen, but excluding guards, timekeepers, office and clerical employees, supervisory leadermen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect

¹ See *MacClatchie Manufacturing Company*, 53 N L R B. 1268

² The Board agent reported that the C. I. O. submitted 486 authorization cards; that 233 cards were dated between December 1943 and October 1944, and that 253 cards were undated. At the hearing, the C. I. O. presented to the Trial Examiner 25 additional authorization cards, dated between August and October 1944. There are approximately 1250 employees in the unit hereinafter found to be appropriate. The A. F. L. relies on its contract for its interest in the proceeding.

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 Ingalls Shipbuilding Corporation, Decatur, Alabama, 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 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 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 they desire to be represented by Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., or by International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, A. F. of L., for the purposes of collective bargaining, or by neither.