In the Matter of MIAMI SHIPBUILDING CORPORATION *and* INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA—CIO

Case No. 10–R–1348.—Decided December 16, 1944

Messrs. Ralph W. Kendall and *Horace E. Loomis*, of Miami, Fla., for the Company.

Mr. Charles N. Smolikoff, of Miami, Fla., for the Union.

Miss Ruth Rusch, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Union of Marine & Shipbuilding Workers of America—CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Miami Shipbuilding Corporation, Miami, Florida, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Paul S. Kuelthau, Trial Examiner. Said hearing was held at Miami, Florida, on November 21, 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. At the hearing, the Company moved to dismiss the Union's petition on the ground that there have been two prior elections among the same employees in which the Union participated, both of which the Union lost. The Trial Examiner reserved ruling on the Company's motion for the Board's determination. For reasons stated in Section III, *infra*, the Company's 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a Florida corporation engaged in the operation of shipyards. The Company's work consists almost entirely of repairing

ships for the United States Navy. The repair work amounts to more than $100,000 in value annually and the raw materials used in making such repairs amount to more than $100,000 in value annually, of which more than 25 percent is shipped from sources outside of the State of Florida.

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

II. THE ORGANIZATION 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.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its guards until the Union has been certified by the Board in an appropriate unit.

On June 1, 1943, there was an election among the Company's guards in which an affiliate of the American Federation of Labor took part. On that occasion, the employees designated no bargaining representative. On June 18, 1943, and again on March 23, 1944, elections were conducted under the auspices of the Board among the same employees. In each of these elections, the Union participated and lost. At the last election, there were 21 votes for the Union and 21 votes against it.[1]

The Company contends that the present petition should be dismissed in view of the fact that the two previous elections involving the same union did not result in the selection of a bargaining representative. Approximately 8 months have elapsed since the last election. The record discloses that the Union has submitted application cards bearing the names of a substantially larger number of employees than the number of votes cast for the Union in the last election.[2] All of these cards are dated subsequent to the election of March 23, 1944. Since no collective bargaining representative was chosen as a result of that election and in view of the Union's showing, we believe that an election should be directed at this time.

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.

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[1] *Matter of Miami Shipbuilding Corporation*, 55 N. L. R. B. 123.

[2] The Field Examiner reported that the Union submitted 32 application cards, 28 of which bore the names of persons listed on the Company's pay roll of October 22, 1944, which contained the names of 46 employees in the appropriate unit. The cards were dated from May through November. Prior to the last election, the Union submitted 20 cards which checked with the pay roll.

IV. THE APPROPRIATE UNIT

We find, in accordance with the stipulation of the parties and the record, that all guards of the Company's Miami plant, excluding the captain, the assistant chiefs, and all 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. In accordance with its request, we shall designate the Union on the ballot as Guards Division, Industrial Union of Marine & Shipbuilding Workers of America—CIO.

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 Miami Shipbuilding Corporation, Miami, Florida, 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 or not they desire to be represented by Guards Division, Industrial Union of Marine & Shipbuilding Workers of America—CIO, for the purposes of collective bargaining.

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