

In the Matter of BETHLEHEM-ALAMEDA SHIPYARD, INC. and BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL #18, A. F. of L.

Case No. 20-R-1159.—Decided January 12, 1945

Mr. Robert E. Tillman, for the Board.

Brobeck, Phleger & Harrison, by *Mr. Richard Ernst*, of San Francisco, Calif., for the Company.

Messrs. W. Douglass Geldert and *Joseph A. Aronson*, of Oakland, Calif., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Building Service Employees' International Union, Local #18, A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Bethlehem-Alameda Shipyard, Inc., Alameda, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John Paul Jennings, Trial Examiner. Said hearing was held at San Francisco, California, on December 6, 1944. The Company and the Union 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Bethlehem-Alameda Shipyard, Inc., is a Delaware corporation with its principal place of business at Alameda, California, where it is engaged in the construction of ships for the United States Maritime

Commission. During the first 11 months of 1944, the Company purchased materials valued in excess of \$3,000,000, about 75 percent of which was shipped to it from points outside the State of California. All ships constructed are delivered to the United States Maritime Commission.

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

II. THE ORGANIZATION INVOLVED

Building Service Employees' International Union, Local #18, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 11, 1944, the Union requested the Company to recognize it as the exclusive collective bargaining representative of the Company's nurses. The Company did not reply to this request.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

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, which now represents some of the maintenance employees of the Company, desires that all nurses employed by the Company at its Alameda yard be adjudged an appropriate bargaining unit. The Company contends that the nurses should not be set up as an appropriate bargaining unit inasmuch as they are confidential employees, and further, that the Union could not be a proper representative of the nurses because it represents other employees of the Company.

The nurses work in or out of a hospital maintained by the Company where they are engaged in giving first aid to employees suffering injury during the course of their employment. Most of the nurses are registered and all are required to have skill in the treatment of injuries and first aid work. They keep records of the injured employees and the causes and descriptions of the accidents. In the event a compensation claim arises a separate file, to which the nurses do not have access, is made. The record discloses that the nurses do not, in the ordinary

¹ The Field Examiner reported that the Union presented 5 membership application cards. There are 10 persons in the appropriate unit.

course of their duties, have access to records dealing with labor relations of the Company. We find, accordingly, that they are not confidential employees.² They constitute a well-defined professional group whose training, skill, and duties differ from those of the remaining employees of the Company.

With respect to the Company's second contention, there is no necessary conflict between self-organization and collective bargaining, and the faithful performance of duty. Freedom to choose a bargaining agent includes the right to select a representative which has been chosen to represent other employees of the Company in a different bargaining unit. Thus, we find the Company's contention that the Union cannot be a proper representative of the employees involved herein to be untenable.

We find that all nurses at the Alameda yard of the Company, excluding doctors 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 means of 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 Bethlehem-Alameda Shipyard, Inc., Alameda, California, 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 Twentieth 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 Regula-

² *Matter of Hudson Motor Car Company*, 45 N. L. R. B. 55; *Matter of American Steel and Wire Company*, 58 N. L. R. B. 253.

tions, 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 any 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 Building Service Employees' International Union, Local #18, A. F. of L., for the purposes of collective bargaining.