

In the Matter of TODD-PACIFIC SHIPYARDS, INC. and INDUSTRIAL PLANT
FIRE FIGHTERS, LOCAL NO. 22938, AFL

Case No. 19-R-1391.—Decided January 15, 1945

Messrs. Edward G. Dobrin and Raymond R. Smith, of Seattle, Wash., for the Company.

Messrs. George E. Flood and Fred Wettrick, of Seattle, Wash., for the Federal.

Mr. L. Presley Gill, of Seattle, Wash., for the Council.

Miss Frances Lopinsky, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Industrial Plant Fire Fighters Union, No. 22938, AFL, herein called the Federal, alleging that a question affecting commerce had arisen concerning the representation of employees of Todd-Pacific Shipyards, Inc.,¹ Seattle, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Maurice M. Miller, Trial Examiner. Said hearing was held at Seattle, Washington, on October 23 and 24, 1944. At the hearing, Seattle Metal Trades Council, chartered by the Metal Trades Department of the AFL, herein called the Council, asked and was granted leave to intervene on behalf of itself and of its affiliates, Building Service Employees Union, Local 6, herein called the BSU, and Ship Scalers Union Local 589, herein called the Scalers. The Company, the Federal, and the Council 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. The Council moved the dismissal of the petition on the ground that the proceeding concerns a jurisdictional dispute between affiliates of the same parent organization. The motion is hereby denied. The Trial Examiner's rulings made at the

¹ At the hearing upon motion of the Company, the pleadings were amended as above.
60 N. L. R. B., No. 5.

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

Todd-Pacific Shipyards, Inc., a Washington corporation, operates yards in Tacoma and Seattle, Washington, where it is engaged in ship-building and ship repair. At the Seattle yard, the only operation directly involved in this proceeding, the Company produces destroyers under the direct supervision of the United States Navy, its entire facilities being devoted to this work. In constructing these vessels, the Company employs such materials as sheet steel, lumber, metal castings, forgings, and pipe, approximately 75 percent of which is derived from sources outside the State of Washington. All vessels produced are delivered to the United States Navy for use in connection with the war effort.

We find that the operations of the Company affect commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Industrial Plant Fire Fighters Union, Local 22938, and Seattle Metal Trades Council, both affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Federal as the exclusive bargaining representative of its firemen and fire watchmen contending that it is bound by contract to recognize the Council as the sole bargaining representative of all of its employees. Since we hereinafter find that the said contract has not covered firemen and fire watchmen, we find it to be no bar to a present determination of representatives.

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

² The Field Examiner reported that the Federal submitted a certified list of members and a list of persons signing designations, containing the names of 118 firemen and fire watchman; that there are approximately 130 employees in the appropriate unit; and that all designations were dated in the month of August 1944. The Council does not claim to represent firemen or fire watchmen employed by the Company, but claims an interest in the proceeding by reason of its contractual relationship with the Company.

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 DETERMINATION OF REPRESENTATIVES

The Federal requests a unit of all firemen and fire watchmen employed at the Company's Seattle yard. The Company and the Council contend that the unit requested is inappropriate because firemen and fire watchmen are represented by the Council under a master agreement negotiated by and between the Council and Pacific Coast Shipbuilders, herein called the Shipbuilders, an employers' association formed for the purpose of carrying on collective bargaining on behalf of its members, including the Company.

Soon after the Company went into operation,³ it joined the Shipbuilders and took part in the negotiation of the master agreement entered into on April 23, 1941, between the Shipbuilders and the Metal Trades Department of the AFL, the Pacific Coast District Metal Trades Council, Local Metal Trades Councils, and affiliated International Unions. Although the agreement defines its scope as "all work and activities of the employer in connection with the construction of new vessels on the Pacific Coast," the closed-shop provision of the contract was made to apply only to employees in the classifications therein set out. Firemen and fire watchmen were not listed among these classifications.

The Federal came into being on September 23, 1941. Prior to that date firemen and fire watchmen had attempted unsuccessfully to obtain representation through unions in the Council but none would take them into membership. They called upon an AFL organizer to aid them in their efforts. Upon failing to find an international union affiliated with the American Federation of Labor which would accept these employees into membership, the organizer petitioned the American Federation of Labor for a Federal charter for the firemen and fire watchmen at the Company's plant. The charter for the Federal was issued. The Federal then applied for admission into the Council and upon being refused, petitioned the Board for certification. Bowman, labor relations officer of the Company, promised recognition to the Federal if it would withdraw its petition. The petition was withdrawn, and Bowman entered into an oral agreement with the Federal, extending to it all of the terms of the master agreement, including the closed shop. This arrangement continued until Bowman's death in 1943. The Company's new labor relations officer refused to admit the existence of the oral agreement, insisting that all

³ That is, the Company's predecessor, Seattle-Tacoma Shipbuilding Corporation.

bargaining must be done through the Council. A new attempt was then made by the Federal to affiliate with the Council which again refused it admittance for the reasons (1) that the Federal is not affiliated with the Metal Trades Department, and (2) that the master agreement precludes any organization becoming a party to it which was not a signatory of the original agreement negotiated in 1941.⁴ Thereupon, the Council, for the first time, seriously asserted jurisdiction over firemen and fire watchmen employed at the Company's yard. In July 1944, the Shipbuilders by letter accepted the BSU as a party to the terms of the master agreement, to represent employees "whose duties are those of fire guards and fire watchmen."

It is clear from the record that the firemen and fire watchmen at the Company's yard constitute an identifiable group; that their skills, training and functions materially differ from those of production and maintenance employees; that their supervision is entirely separate from that of other employees; that they were not, until 1944, considered as coming under the master agreement and that they have, since 1941, been represented in a separate unit. It is equally clear that similar employees are represented by the Council in yards of other members of the Shipbuilders and that they are now specifically included within the coverage of the master agreement which governs labor relations policy of all members of the Shipbuilders. In view of the history of bargaining involving firemen and fire watchmen at the Company's plant, and their identifiability, we are of the opinion that they may constitute a separate appropriate unit, apart from the multi-employer unit to which other employees of the Company and other firemen and fire watchmen in the vicinity belong.⁵ On the other hand, because of the existence of the master contract which now covers such employees, they may properly be bargained for by the Council as part of the larger unit. Under the circumstances, we are of the opinion that the determination of the unit issue, with respect to these employees, should depend, in part, upon the desire of such employees to be expressed in the election hereinafter directed. Consequently, we shall make no final determination of the unit at this time but shall defer the determination pending the results of said election.

Accordingly, we shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the firemen and fire watchmen who were employed by the Company 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. There shall be excluded from said voting group all supervisory employees with authority to hire, pro-

⁴ The BSU was not a party to the 1941 agreement but was later accepted as one

⁵ See *Matter of Glen Alden Coal Co.*, 45 N L R. B 738.

mote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

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 Todd-Pacific Shipyards, Inc., Seattle, Washington, 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 Nineteenth 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 firemen and fire watchmen in the Company's employ, 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, and excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, to determine whether they desire to be represented by Industrial Plant Fire Fighters, Local No. 22938, AFL, or by Seattle Metal Trades Council, chartered by the Metal Trades Department of the AFL, for the purposes of collective bargaining, or by neither.

: CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.