

In the Matter of TODD-JOHNSON DRY DOCKS, INC. and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL No. 29, CIO

Case No. 15-R-1256.—Decided February 2, 1945

Messrs. J. N. Pharr, Nicholas Callan, and L. M. Lindsey, of New Orleans, La., for the Company.

Mr. Arthur Leary, of New Orleans, La., for the Union.

Mr. Harry Nathanson, 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, Local No. 29, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Todd-Johnson Dry Docks, Inc., of New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Laurence H. Whitlow, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on January 8, 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. 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

Todd-Johnson Dry Docks, Inc., is a Delaware corporation with offices, shipyards, and drydocks located on the Mississippi River at New Orleans, Louisiana, where it is engaged in the repair of vessels of

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all flags in foreign and coastwise trade, boats and barges in river and inland water trade, as well as harbor craft and Government owned vessels. In New Orleans the Company operates two yards, about 3 miles apart, called the upper yard and the lower yard, which are solely involved in the instant proceeding. During 1944, the Company purchased raw materials valued at approximately \$4,225,000, most of which was shipped to the Company from points outside the State of Louisiana. During the same period the gross receipts of the Company for the services it performed were valued at approximately \$20,000,000, and approximately 90 percent of the Company's business was the repairing, altering, converting, and drydocking of marine vessels under master contracts with the United States Navy, United States Army, and War Shipping Administration.

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

II. THE ORGANIZATION INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America, Local No. 29, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

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

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of the employees it seeks to represent in this proceeding.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 DETERMINATION OF REPRESENTATIVES

The Union is now recognized by the Company as the exclusive bargaining representative of certain of its upper and lower yard employees in three separate units. These units consist of timekeepers; guards and watchmen; and production and maintenance employees, excluding, among others, office and clerical personnel. In this proceeding the Union seeks to represent "all janitors, janitresses, maids, and porters at the Company's upper and lower plants, as part of the

¹ The Field Examiner reported that the Union submitted 16 application for membership cards and that there were 27 employees sought to be represented by the Union

established unit of production and maintenance employees, excluding all office, clerical and supervisory employees . . ." The Company contends that those of the employees sought by the Union who work in its general offices are an integral part of the office force, that employees of the office force are excluded under the terms of its contract with the Union covering the production and maintenance unit, and consequently the janitorial employees working in the general offices should not be represented together with production and maintenance personnel. It also contends that, in no event, can these employees be represented for collective bargaining purposes since they are in a position to see documents of a confidential nature pertaining to its labor relations policy.

On the Company's pay roll of October 29, 1944, there were listed 27 employees in the categories sought by the Union. Of this number, 16 were employed within the Company's general offices and the remainder were employed in the locker rooms located about the yards and wharves. The Company does not object to the consolidation of the latter group with its production and maintenance employees. Although all the employees sought by the Union are on the Company's office pay roll, are paid on a weekly basis, and receive vacations similar to those of office employees, they perform the usual functions associated with their classifications, duties which are entirely different from those of office employees. Furthermore, janitors, janitresses, maids and porters in the general offices, and those engaged in the locker rooms located about the yards and wharves do the same type of work. Inasmuch as both groups perform work which is identical and a separate unit for the group employed in the general offices would not, therefore, be feasible, and since the functions of both groups are unrelated to those of office employees, we see no valid reason to prevent all those sought by the Union from being represented as part of the production and maintenance unit. We find no merit in the contention of the Company that janitors, janitresses, maids, and porters who work in the general offices are confidential employees because they have access to confidential records on or in the desks and files of the offices they clean.² These employees do not require access to any confidential information in order to perform their functions. Moreover, it would seem that any janitor, janitress, maid or porter who used such information would be subject to disciplinary action by the Company.

We find that all janitors, janitresses, maids, and porters at the Company's upper and lower yards in New Orleans, Louisiana, excluding all office and clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise

² See *Matter of Aluminum Company of America*, 54 N. L. R. B. 834.

effect changes in the status of employees, or effectively recommend such action, may properly form part of the existing production and maintenance unit. We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among such employees 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. If a majority of this group select the Union, they will thereby have indicated their desire to be included in the established production and maintenance unit.

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-Johnson Dry Docks, Inc., New Orleans, Louisiana, 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 Fifteenth 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 all janitors, janitresses, maids, and porters at the Company's upper and lower yards in New Orleans, Louisiana, but excluding all office and clerical employees 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, 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 or not they desire to be represented by International Union of Marine and Shipbuilding Workers of America, Local No. 29, CIO, for the purposes of collective bargaining.