In the Matter of SUN SHIPBUILDING AND DRY DOCK COMPANY, EMPLOYER AND PETITIONER *and* LOCAL NO. 2, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, UNAFFILIATED *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, CIO, AND ITS AFFILIATED LOCAL NO. 2

In the Matter of SUN SHIPBUILDING AND DRY DOCK COMPANY, EMPLOYER *and* LOCAL NO. 2, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, UNAFFILIATED, PETITIONER

Cases Nos. 4-RM-39 and 4-RC-469, respectively.—Decided September 20, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon separate petitions duly filed by the Employer and Local No. 2, Industrial Union of Marine and Shipbuilding Workers of America, Unaffiliated, herein designated as Unaffiliated Local 2, a consolidated hearing in these cases was held before Ramey Donovan, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing the Intervenors, Industrial Union of Marine and Shipbuilding Workers of America, CIO, herein referred to as the International and its affiliated Local No. 2, herein referred to as Affiliated Local 2, moved to dismiss the petition on the ground that an existing collective bargaining agreement is a bar to this proceeding. For reasons discussed below, the motion is hereby denied.[1]

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Gray].

[1] The Intervenors also contended that Unaffiliated Local 2's petition should be dismissed because some of its officers have not complied with the filing requirements of Section 9 (f), (g), and (h). The Board has repeatedly held that the filing requirements of this section are not a litigable issue, but for the Board to determine in its administrative capacity. *Matter of Trueman Fertilizer Co.*, 81 N. L. R. B. 72. Our records show that the officers of Unaffiliated Local 2 have complied with the filing requirements of Section 9 (f), (g), and (h).

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. Unaffiliated Local 2 and the Intervenors are labor organizations claiming to represent employees of the Employer.

3. The question concerning representation:

The Intervenors contend that a collective bargaining contract entered into with the Employer on February 5, 1948, for a term to expire on December 31, 1949, is a bar to this proceeding. The Employer and Unaffiliated Local 2 argue that the contract is not a bar because a schism within the ranks of the contracting union has created a substantial, unresolved doubt as to the identity of the labor organization which the employees desire to represent them.

On March 30, 1949, at a special meeting [2] attended by approximately 150 members out of a total membership of 2,500, a resolution was overwhelmingly passed to disaffiliate from the International and form an independent union, Unaffiliated Local 2. All but one of the officers of Affiliated Local 2, all the members of the Executive Board, and most of the members of the grievance committee transferred their allegiance to the new local and assumed comparable duties with Unaffiliated Local 2. Unaffiliated Local 2 took possession of the property and funds of the old local, including the meeting hall. As soon as the International learned of the action of the membership, it appointed an administrator and new provisional officers for its Local No. 2. Meetings of Unaffiliated Local 2 since the schism have been attended by from 350 to 1,500 employees. Those by Affiliated Local 2 have had from 25 to 100 present.[3]

Each of the two contending factions requested the Employer to recognize it as the representative of the Employer's employees under the contract of February 5, 1948. Each expressed its desire to abide by the terms of this contract. Each of them demanded that the Employer turn over to it the checked-off dues collected by the Employer. The Employer has refused to recognize either of the two factions for

[2] The bylaws of Affiliated Local 2 provide that special meetings may be held upon 48 hours notice after a petition for such meeting has been signed by 50 or more members in good standing. Such a petition was executed by more than 50 members on the morning of March 28 and notices were posted on company bulletin boards. The Intervenors attack the legality of the action of Unaffiliated Local 2 under the union constitution and bylaws. The Board cannot undertake to determine the constitutionality or legality of this section of disaffiliation. *Matter of Brenizer Trucking Company,* 44 N. L. R. B. 810; *Matter of Harbison-Walker Refractories,* 44 N. L. R. B. 1280.

[3] Unaffiliated Local 2 also filed with the Regional Director about 2,500 signed authorization cards. Affiliated Local 2 filed about 560 such cards. Neither group of cards was checked against a pay roll.

grievance or other purposes or to pay checked-off dues to either of them.[4]

In view of the events described and on the entire record, we believe that a substantial, unresolved doubt exists as to the identity of the labor organization which the employees desire to represent them. This doubt will best be resolved by an election. Accordingly, we find that the existing contract does not constitute a bar to a present determination of representatives.[5]

We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. In accordance with an agreement of the parties, we find that all production and maintenance employees at the Employer's Chester, Pennsylvania, plant, excluding pattern makers and their apprentices, employees of the main offices, employees in the contract office (i. e. employees upon the pay roll of Department 91 whose work is in connection with the bonus contracts of other employees), draftsmen, employees of the medical and first aid stations, all employees who are now being paid upon a salary basis, guards, foremen, assistant foremen, leaders, and other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION[6]

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 60 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the

[4] The Employer filed an interpleader action in the United States District Court and after hearing, the Court ordered the Employer to deposit the checked-off dues with the Registry of the Court until it was properly determined which of the contending organizations was entitled to the dues. Recently the Intervenors succeeded in having the same Court enter a temporary order restraining Unaffiliated Local 2 from disposing of any of the funds and property to which it came into possession as result of the disaffiliation.

[5] *Matter of Hackensack Water Company,* 84 N. L. R. B. 842; *Matter of Elizabethtown water Company,* 84 N. L. R. B. 845; *Matter of Pittsburgh Plate Glass Company, Columbia Chemical Division,* 80 N. L. R. B. 1331; *Matter of Jasper Wood Products Company, Inc.,* 72 N. L. R. B. 1306; *Matter of Foley Lumber & Export Corporation,* 70 N. L. R. B. 73; *Matter of Carson Pirie Scott & Company,* 69 N. L. R. B. 935.

[6] The names of the unions appear as amended by Order of the Board, dated October 6, 1949.

date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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 also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by Local No. 2, Industrial Union of Marine & Shipbuilding Workers of America, affiliated with the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, as Lodge 802, A. F. L., or by Industrial Union of Marine & Shipbuilding Workers of America, CIO, and its Affiliated Local No. 2, or by neither.