

In the Matter of NEW YORK SHIPBUILDING CORPORATION, EMPLOYER AND PETITIONER *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 1, CIO,¹ *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 1, AFFILIATE OF INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS & HELPERS OF AMERICA, LODGE 801, AFL,² UNION

In the Matter of NEW YORK SHIPBUILDING CORPORATION, EMPLOYER *and* PATTERN MAKERS LEAGUE OF NORTH AMERICA, PHILADELPHIA ASSOCIATION, AFL,³ PETITIONER

In the Matter of NEW YORK SHIPBUILDING CORPORATION, EMPLOYER *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 1, AFFILIATE OF INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, LODGE 801, AFL, PETITIONER

Cases Nos. 4-RM-54, 4-RC-581, and 4-RC-605.—Decided April 28, 1950

DECISION

AND

DIRECTION OF ELECTIONS

Upon separate petitions duly filed, a consolidated hearing was held before Julius Topol, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.⁴

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with

¹ Herein called the IUMSWA-CIO, and Local 1, CIO, respectively.

² Herein called Local 1, AFL.

³ Herein called the Pattern Makers.

⁴ The hearing officer referred to the Board the Intervenor's motion to dismiss the petition, because of pending unfair labor practice charges (Cases Nos. 4-CA-332; 4-CB-61; 4-CA-140; and 4-CB-18). The charges in the first two cases have, since the hearing, been dismissed by the General Counsel, which constitutes a final disposition of these cases. See *Times Square Corporation*, 79 NLRB 361. For reasons stated in *Carson Pirie Scott & Company*, 69 NLRB 935, we find that the pendency of the latter two cases does not bar this proceeding. The motion is hereby denied.

The hearing officers also referred to the Board the Intervenor's motion to dismiss upon the ground of contract bar. For reasons hereinafter discussed, this motion is hereby denied.

this case to a three-member panel [Members Reynolds, Murdock, and Styles].

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. The labor organizations involved claim to represent certain employees of the Employer.
3. The question concerning representation:

Local 1, CIO contends that a collective bargaining agreement entered into by it and the Employer on September 22, 1947, and automatically renewable each June 23 thereafter, unless terminated by the parties, is a bar to this proceeding. The Employer, Local 1, AFL, and the Pattern Workers 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.

In July 1948, a special membership meeting was held by the local of the contracting union for the purpose of discussing disaffiliation from the IUMSWA-CIO. This question was referred to the local's official board for investigation and report. At a later meeting, on September 28, 1948, at which about 700 of the approximate 3,000 members were present it was overwhelmingly voted to disaffiliate from the IUMSWA-CIO. On September 29, 1948, the local's executive secretary notified the Employer of its disaffiliation. Immediately thereafter, the Employer was also notified by another group (Local 1, CIO, herein) that it had taken over the local as representative of the group loyal to the CIO.

At first the seceded group (Local 1, AFL, herein) remained unaffiliated. In July 1949, they became affiliated with the Boilermakers, AFL. Each of the contending factions has, at all times, maintained that it represents a majority of the employees under the contract. The Employer has refused recognition to either and filed its petition herein.

The present situation is similar to that in *Boston Machine Works Company*,⁵ and for reasons stated therein we find that the contract between the Employer and the IUMSWA-CIO is not a bar to a present redetermination of representatives.⁶ We conclude that the conflicting

⁵ 89 NLRB 59.

⁶ Also as a bar to this proceeding, Local 1, CIO introduced into the record a copy of a judgment of the Superior Court of New Jersey, Chancery Division. This court found in substance, that there was no provision in the constitution or bylaws of the IUMSWA-CIO or its local concerning disaffiliation and that the action taken by the group to disaffiliate was not effective, and that the property rights remained in Local 1, CIO. An appeal from this judgment is pending. We find no merit in this contention. We have already held that court litigation concerning the legality of disaffiliations or of property

claims of the labor organizations involved can best be resolved by an election.

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. The appropriate units; the determination of representatives:

All parties except the Pattern Makers stipulated that the following unit is appropriate: All employees of the Employer, including the counters, timekeepers, estimators, and rate setters in departments 3 and 70, but excluding main office employees, foremen, assistant foreman, ship and shop foremen, the medical staff, and the employment office staff. This unit is substantially the same as the contract unit. The Pattern Makers seeks to establish a separate unit of patternmakers. These employees have been included in the over-all unit since 1934.

The Employer employs about 20 patternmakers. Each patternmaker is required to have 4 years of apprenticeship before being certified as a journeyman. The patternmakers perform all their work in the pattern shop, which is in a separate building. They are under the immediate supervision of a foreman who supervises no one else except a machine repairman, who repairs the equipment of the pattern shop. The Patternmakers do not seek to include the machine repairman. We find that the patternmakers are skilled craftsmen who perform the usual duties of their craft, and that they may constitute a separate unit, despite their previous inclusion in a broader unit.⁷ Because of the bargaining history, however, they also may appropriately remain a part of the over-all unit.

However, we shall make no final determination at this time, but shall first ascertain the desires of the employees as expressed in the elections hereinafter directed. We shall direct that separate elections be held among the employees at the Employer's shipyard, Camden, New Jersey, within the voting groups described below:

(a) All patternmakers and apprentices excluding supervisors as defined in the Act;

(b) All remaining employees including the counters, timekeepers, estimators, and rate setters in departments 3 and 70, but excluding main office employees, the medical staff, the employment office staff, guards,

rights bear no relationship to our investigation of questions concerning representation of employees. See *Sperry Gyroscope Company*, 88 NLRB 907; *Air Conditioning of Southern California, et al.*, 81 NLRB 949; *Pratt & Letchworth Co., Inc.*, 89 NLRB 124.

The facts in the case before us are very similar to those in *Sun Shipbuilding and Dry Dock Co.*, 86 NLRB 20, which also involved a schism in another local of the IUMSWA (CIO).

⁷ *Sun Shipbuilding and Dry Dock Company*, 77 NLRB 1153, and cases cited therein; *Pratt & Letchworth Co. Inc., supra.*

foremen, assistant foreman, ship and shop foremen, and all other supervisors as defined in the Act.

If a majority of the voters in voting group (a) select the Pattern Makers, they will be taken to have indicated their desire to constitute a separate appropriate unit.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, separate elections by secret ballot shall be conducted as early as possible, but not later than 40 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 voting groups described in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of the Direction of Elections, including employees who did not work during said payroll 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 elections, and also excluding employees on strike who are not entitled to reinstatement, to determine whether:

(1) The employees in the voting group (a) described in paragraph 4, above, desire to be represented, for purposes of collective bargaining, by Pattern Makers League of North America, or by Industrial Union of Marine and Shipbuilding Workers of America, Local 1, an affiliate of International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, Lodge 801, AFL, or by Industrial Union of Marine and Shipbuilding Workers of America, Local 1, CIO, or by none;

(2) The employees in the voting group (b) described in paragraph 4, above, desire to be represented, for purposes of collective bargaining, by Industrial Union of Marine and Shipbuilding Workers of America, Local 1, an affiliate of International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America, Lodge 801, AFL, or by Industrial Union of Marine and Shipbuilding Workers of America, Local 1, CIO, or by neither.