

IN THE MATTER OF THE INGALLS SHIPBUILDING CORPORATION *and* OFFICE  
EMPLOYEES INTERNATIONAL UNION, AFL

*Case No. 15-R-1398.—Decided May 7, 1946*

*Mr. D. W. Strickland*, of Birmingham, Ala., *Messrs. Charles S. Mitchell, J. Paul Keefe*, and *W. R. Guest*, all of Pascagoula, Miss., for the Company.

*Mr. Walter S. Lowry*, of Pascagoula, Miss., *Mr. A. R. Carson*, of Sheffield, Ala., *Mr. J. C. Bloodworth, Jr.*, of Tampa, Fla., and *Mr. O. K. Weisenburg*, of Pascagoula, Miss., for the Office Workers.

*Mr. C. L. Hancock*, of Pascagoula, Miss., for the Local Teamsters.

*Mr. Leo B. Carter*, of Mobile, Ala., for the International Teamsters.

*Mr. Warren H. Leland*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Office Employees International Union, AFL, herein called the Office Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of The Ingalls Shipbuilding Corporation, Pascagoula, Mississippi, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. The hearing was held at Pascagoula, Mississippi, on February 13, 14, 15, 18, and 19, 1946. The Company, the Office Workers and International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers of America, Local 228, herein called the Local Teamsters, appeared and participated.<sup>1</sup> At the hear-

<sup>1</sup> A motion to intervene by the Local Teamsters was granted at the hearing.

During the course of the hearing Mr Leo Carter, International representative of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the International Teamsters, sent a telegram to the Trial Examiner. This telegram stated, in substance, that the Company had recognized that steel checkers in Department 32 and clerical workers in Department 57 fall within the craft jurisdiction of the International Teamsters, that these workers should be established as a separate unit; and that the International Teamsters should be accorded a place on the ballot in any election directed among such employees as a separate unit. We construe this telegram as a formal motion to intervene made by the International Teamsters, and we hereby grant the motion.

ing, the Company moved to dismiss the petition on the grounds that the Company is not engaged in commerce within the meaning of the National Labor Relations Act. For reasons which appear in Section I, below, the motion is hereby denied. 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 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

The Ingalls Shipbuilding Corporation, a wholly owned subsidiary of Ingalls Ironworks Company, is a Delaware corporation maintaining its principal office in Birmingham, Alabama. The Company operates two plants, which are engaged in the general shipbuilding business, one located at Decatur, Alabama, and the other at Pascagoula, Mississippi. The plant located at Pascagoula, Mississippi, is the sole plant involved in this proceeding.

The Pascagoula plant uses "principal" materials consisting of steel, machinery, pipes, etc. During the past 12-month period, the value of such materials exceeded \$10,000,000, of which approximately 95 percent originated from points outside the State of Mississippi. The title to substantially all of these materials was vested and remained in the United States Maritime Commission. During the past 12-month period, the Company purchased plant equipment valued at about \$25,000, of which approximately 90 percent was received from points outside the State of Mississippi. Also during this period the Company's finished products, which consisted of various types of cargo ships, were valued in excess of \$10,000,000. All of such ships were legally delivered to the United States Maritime Commission at Pascagoula, Mississippi, and apparently entered into interstate and foreign commerce. After the petition herein was filed, the Company entered into a contract with a Brazilian corporation for the construction of ships valued in excess of \$10,000,000. The Company has purchased materials valued at approximately \$3,000,000 for the construction of these ships.

The Company alleges, in effect, that, since the goods in which it trades are the property of the United States Government which does not engage in interstate commerce, but rather in administrative acts of Government unrelated to commerce, the Company cannot be said to be engaged in interstate commerce within the meaning of the Act. Although its operations are conducted for the benefit of the United

States Government, the Company is nevertheless engaged as an independent contractor in a commercial venture for profit. And whatever governmental function the United States may be exercising in its arrangement with the Company, it is plain that the Company does not thereby become the United States Government or have bestowed upon it the sovereign immunities reserved to the Federal Government. The Company remains at all times a private corporation—privately owned, managed, and operated in the interests of its stockholders. Since, in the course of the Company's operations, there is a steady flow of materials from outside the State to the Pascagoula, Mississippi, plant, and from that plant to out-of-State destinations, the Company is plainly engaged in commerce within the meaning of the Act, and it is of no moment for purposes of the applicability of the Act to the Company that it does not have title to the goods so transported.<sup>2</sup> We note, moreover, that during the past 12 months the Company acquired title in its own behalf to about \$25,000 worth of plant equipment, of which about 90 percent was received from points outside the State of Mississippi, and that it has recently contracted with a Brazilian company for the construction of ships valued at approximately \$10,000,000.

Contrary to the Company's contention, we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATIONS INVOLVED

Office Employees International Union is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its Local 228, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

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

A statement of a Board agent, introduced into evidence at the hearing, indicates that Office Workers represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</sup>

<sup>2</sup> *N. L. R. B. v. Fainblatt*, 306 U S 601, 607.

<sup>3</sup> The Field Examiner reported that the Office Workers submitted application cards bearing the names of 95 employees.

There are approximately 243 employees in the appropriate unit.

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

All parties agree, generally, that a unit of office and clerical employees of the Company's Pascagoula, Mississippi, shipyard is appropriate.<sup>4</sup> However, contrary to the Office Workers' wishes, the Company would exclude the billing clerks in Department 5, material coordinators in Department 7, the metal laboratory clerk in Department 33, and machine shop office clerk and pipe shop office clerk in Department 70, on the ground that they purportedly have a closer community of interest with the production and maintenance employees than with the other employees sought by the Office Workers. Also in opposition to the Office Workers' demands, the Company seeks the exclusion of the telephone operator-receptionist and the messenger in Department 55, and the office clerk to the superintendent in Department 70, because they are allegedly "confidential" employees. In addition, contrary to the request of the Office Workers for the inclusion of steel checkers in Department 32 and the clerks in Department 57, the International Teamsters urges that these employees be established as a separate unit; apparently the Company is in agreement with the International Teamsters, but the Local Teamsters disclaims any interest in these employees and does not object to their inclusion in the unit sought by the Office Workers.

For a number of years the Metal Trades Department of the A. F. of L., herein called the Metal Trades, has been recognized by the Company, pursuant to written contract, as the bargaining representative of the production and maintenance employees of the Pascagoula plant. With this bargaining history in mind, we turn to a discussion of the disputed categories of employees.

*Department 5—Billing Clerks:* There are four billing clerks in the mold loft which is located above the fabricating shop. The loftmen send cards to the billing clerks who translate the information on the cards into ship or mold bills. They perform no manual labor and their only tools are "pencils and erasers." The billing clerks have not been represented by the Metal Trades as a part of the production and maintenance unit. We shall include the billing clerks in the unit hereinafter found appropriate.

*Department 7—Material Coordinators:* There are 13 coordinators, or expeditors, who follow up missing pieces of material and ensure they are made available to the workers. These employees have not

<sup>4</sup> The agreed inclusions are listed in Appendix A, annexed hereto and the agreed exclusions are contained in Appendix B, also attached hereto.

been represented by the Metal Trades as a part of the production and maintenance unit. We shall include the material coordinators in the unit hereinafter found appropriate.

*Department 33—Metal Laboratory Clerk:* This employee prepares reports on tests, and checks the weights, etc., of work coming out of the annealing plant and galvanizing vats. He spends virtually all his time in the office and performs no manual labor. This employee has not been represented by the Metal Trades as a part of the production and maintenance unit. We shall include the metal laboratory clerk in the unit hereinafter found appropriate.

*Department 70—Machine Shop Office Clerk and Pipe Shop Office Clerk:* These two employees perform only clerical duties in their respective shops. They maintain records and do not physically handle the products. These employees have not been represented by the Metal Trades as part of the production and maintenance unit. We shall include the machine shop office clerk and pipe shop office clerk in the unit hereinafter found appropriate.

*Department 55—Telephone Operator-Receptionist and Messenger:* The telephone operator-receptionist operates a cordless telephone board in the employment office. Among her various duties, she routes job applicants to the proper interviewers, and instructs employees on their first work day regarding reporting procedures. The messenger acts as a courier for personnel files and other documents.

The Company would exclude these two employees on the ground that they have access to confidential information. However, in the recent *Ford* case,<sup>5</sup> we held that the term "confidential" was to be limited so as to embrace only those employees who assist and act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. Clearly these two clericals are not confidential employees within the meaning of the *Ford* case. We shall, accordingly, include them in the unit hereinafter found appropriate.

*Department 70—Superintendent's Office Clerk:* This employee performs clerical work in connection with the files in the office of the superintendent of Department 70. The Company urges her exclusion on the ground that, through the files, she has access to confidential information relating to labor relations. We note, however, that the secretary to the superintendent of Department 70 is excluded by agreement of the parties.<sup>6</sup> Without passing upon whether or not the superintendent exercises managerial functions in the field of labor relations by formulating, determining, and effectuating the Company's labor policies, inasmuch as the office clerk apparently does not act as a private secretary to the superintendent, we are of the opinion

<sup>5</sup> See *Matter of Ford Motor Company (Chicago Branch)*, 66 N. L. R. B. 1317.

<sup>6</sup> See Appendix B, attached hereto.

that she is not a confidential employee as that term is defined in the *Ford* decision. Consequently, we shall include her in the unit hereinafter found appropriate.

*Department 32—Steel Checkers; Department 57—Clerks:* There are approximately 20 steel checkers who receive and disburse what is commonly referred to as “detail materials.” As material is received or loaded, either by hand or by crane, they check the item numbers on the loading list against those shown on the pieces of material, and then have the material stacked. They do not physically handle the materials. There are approximately 9 clerical employees in Department 57 who work in the warehouses scattered throughout the yard. They perform only clerical duties.

The steel checkers and clerks have not been represented by the Metal Trades as part of the production and maintenance unit. In September 1941, the International Teamsters notified the Company that it claimed to represent a majority of the Pascagoula plant’s warehousemen, material clerks, and truck drivers and their helpers. The Company subsequently dealt with the International Teamsters with reference to the truck drivers only. No written agreement, moreover, was ever executed by these parties. Thus, there has been no compelling history of collective bargaining with respect to the steel checkers and clerks. Furthermore, despite the position of the International Teamsters that a separate unit of these employees is appropriate, the Local Teamsters, which ostensibly would be the active bargaining agent for employees of the Company, has disclaimed all interest in steel checkers and clerks, and does not object to their inclusion within the unit sought by the Office Workers.

In view of these circumstances, and inasmuch as the steel checkers and clerks are clearly clerical employees, we shall include them in the unit hereinafter found appropriate.

We find that all office and clerical employees of the Company at its Pascagoula, Mississippi, shipyard, including billing clerks in Department 5; material coordinators in Department 7; metal laboratory clerk in Department 33; machine shop office clerk, and pipe shop office clerk in Department 70; telephone operator-receptionist, and messenger in Department 55; office clerk to the superintendent in Department 70; steel checkers in Department 32; clerical employees in Department 57; and the employees enumerated in Appendix A, attached hereto, but excluding the employees enumerated in Appendix B, attached hereto, 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 an election by secret ballot among 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 The Ingalls Shipbuilding Corporation, Pascagoula, Mississippi, 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 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 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 Office Employees International Union, AFL, for the purposes of collective bargaining.

## APPENDIX A

Department 26 (Tool Room)	Department 51 (Accounting)
3 tool room clerks	2 addressograph operators
Department 50 (Production and cost control)	7 key punch operators
10 bonus clerks	1 clerk typist (war bonds)
2 audit clerks	1 audit clerk (IBM)
12 field cost clerks	1 audit clerk (invoices)
	1 freight clerk

1 stationary storekeeper	3 clerk typists
2 comptometer operators	4 material record clerks
4 cardex clerks	Department 62 (Material Order and Reallocation)
1 purchase order distribu- tion clerk	2 clerk typists
3 stenographers	1 stenographer
8 typists	1 allowance list clerk
1 checker	Department 64 (Plant Engineer- ing)
1 audit clerk	1 file clerk
3 pay-roll clerks	1 clerk to labor foreman
7 IBM machine operators	1 clerk - stenographer to labor foreman
5 PBX operators	Department 65 (Purchasing)
Department 52 (Drafting Room)	3 file clerks
3 blueprint machine oper- ators	1 stenographer
8 blueprint trimmers	Department 66 (Safety)
3 plan file clerks	1 sales clerk
1 vault clerk	Department 71 (Operating Divi- sion—Outfitting)
Department 59 (Material Control)	1 key clerk
1 control clerk	Department 73 (Operating Divi- sion—testing)
4 material planners	1 clerk-secretary
7 general clerks	
Department 61 (Planning)	
9 planners	

## APPENDIX B

Department 15 (Warehouse)

All employees

Department 18 (Maintenance Machinists)

All employees

Department 27 (Paint)

All employees

Department 30 (Ship Storekeepers)

All employees

Department 52 (Drafting Room)

All employees

Department 59 (Material Control)

All employees except those indicated in Appendix A

Department 61 (Planning)

All employees except those indicated in Appendix A

Department 62 (Material order and Reallocation)

All employees except those indicated in Appendix A

Department 68 (Operating Division—Works department)

All employees

Department 69 (Operating Division—Hull)

All employees

Department 72 (Operating Division—Electrical)

All employees

All positions filled by individuals on the Birmingham pay roll

Department 26 (Tool Room)

1 clerk-secretary to the foreman

Department 50 (Production and Cost Control)

1 clerk-typist to chief industrial engineer

1 secretary to department head

Department 51 (Accounting)

1 supervisor of the stenographic section

1 chief telephone operator

1 supervisor of the porters and maids

2 teletype operators

1 duplicating machine operator

1 secretary to the chief accountant

Department 53 (Administrative and Executive)

1 secretary to the President

1 secretary to the Executive Vice President

1 secretary to the Plant Comptroller

1 secretary to the Works Manager

1 secretary to the Legal Counsellor

1 secretary to the Director of Public and Labor Relations

1 secretary to the Assistant Plant Comptroller

1 confidential clerk to the Plant Comptroller

Department 55 (Industrial Relations)

1 secretary to the director

1 secretary to the employment manager

1 interviewer

1 typist in the training department

1 general clerk in the employment department

1 clerk

1 general clerk

Department 56 (Statistical)

6 personnel records clerks

Department 57 (Materials—warehouse and steel)

1 secretary to the Materials Superintendent

Department 58 (Medical)

11 registered nurses

1 first aid supervisor

- 1 x-ray technician
- 1 file clerk
- 1 receptionist
- 1 secretary to the medical director
- Department 60 (Locomotive)
  - 2 draftsmen
- Department 62 (Material order and Reallocation)
  - 2 draftsmen
- Department 63 (Estimating)
  - 1 draftsman (estimator)
  - 1 secretary to chief estimating and locomotive engineer
- Department 64 (Plant Engineering)
  - 1 engineer
  - 1 secretary to the plant engineer
  - 1 secretary to assistant plant engineer
  - 1 clerk-stenographer to maintenance superintendent
- Department 65 (purchasing)
  - 1 supervisor of clerks
- Department 66 (Safety)
  - 5 safety inspectors
  - 1 clerk-typist
  - 1 secretary-clerk to safety director
- Department 67 (Fire Department)
  - 1 secretary to the fire chief
- Department 68 (Operating Division—Works Department)
  - 2 Turkish citizens
- Department 70 (Operating Division—Machinery)
  - 2 clerk-secretaries to the machine shop and pipe shop foreman
  - 1 secretary to the superintendent
  - 1 clerk-secretary to chief inspector
- Department 71 (Operating Division—Outfitting)
  - 1 secretary to machinery and outfitting superintendent