

In the Matter of HIGGINS INDUSTRIES, INC. and INDUSTRIAL UNION OF
MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O.

Case No. 15-R-1457.—Decided December 29, 1945

Montgomery, Fenner and Brown, by Messrs. Fontaine Martin, Jr. and C. P. Fenner, Jr., of New Orleans, La., and Mr. Stuart S. Hellman, of New Orleans, La., for the Company.

Messrs. Charles L. Brecht and W. T. Christ, of New Orleans, La., for the CIO.

Messrs. Bentley G. Byrnes, C. E. Alexander, Jr., and John Berni, of New Orleans, La., and Mr. H. S. Thatcher, of Washington, D. C., for the AFL.

Mr. Jack Mantel, 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, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Higgins Industries, Inc., New Orleans, Louisiana, 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 New Orleans, Louisiana, on October 31, 1945, and November 2, 5, 6, and 10, 1945. The Company, the CIO, New Orleans Metal Trades Council, affiliated with the Metal Trades Department of the American Federation of Labor jointly with New Orleans Building & Construction Trades Council, affiliated with the Building & Construction Trades Department, Washington, D. C., American Federation of Labor, herein called the MTC and BCTC, respectively, and collectively referred to as the AFL, 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

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prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board and present oral argument before the Board on December 10, 1945.

Upon the entire record in the case,¹ the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Higgins Industries, Inc., is a Louisiana corporation with its principal office and place of business located in New Orleans, Louisiana, where it is engaged in boat and ship building, and the manufacture of marine equipment. The Company's plants involved in this proceeding are known as the Industrial Canal Plant, City Park Plant, and Bayou St. John Plant, all located in New Orleans, Louisiana.

During the first 6 months of 1945, raw materials used by the Company were valued at approximately \$11,157,590, of which approximately 70 percent was received from points outside the State of Louisiana. During the same period, the Company's finished products were valued at approximately \$30,091,615, of which approximately 96 percent was sold to the United States Government.

The Company admits, for the purposes of this proceeding only, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

New Orleans Metal Trades Council, affiliated with the Metal Trades Department of the American Federation of Labor and the New Orleans Building & Construction Trades Council, affiliated with the Building & Construction Trades Department, Washington, D. C., 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 CIO or the AFL as the exclusive bargaining representative of certain of its em-

¹ On November 19, 1945, the parties entered into a stipulation to amend the petition and pleadings by including the names of certain co-liquidators to the name of the Company herein. The stipulation further provided that the co-liquidators be made parties to this proceeding and that the disposition of this matter by the Board shall be binding on said co-liquidators as parties to this proceeding. The stipulation is hereby approved and made a part of the record.

ployees until the CIO or the AFL has been certified by the Board in an appropriate unit.²

A statement of the Trial Examiner at the hearing indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.³

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 CIO seeks a unit of all production and maintenance employees at the Company's Industrial Canal, City Park, and Bayou St. John plants, including leadermen and assistant foremen, but excluding construction employees, boat crews, plant-protection employees, production clerks, inspectors, office and clerical employees, foremen, and other supervisory employees. The Company is in substantial agreement with the unit proposed by the CIO. The AFL, however, would also include construction employees and foremen.

In November 1940, the Company and the American Federation of Labor entered into a written collective bargaining contract, which provided for wage rates of production and maintenance employees who were represented by the MTC. Neither the MTC nor the BCTC, as such, were signatories to this agreement; at that time the Company did not employ construction employees. In August 1941, the prior contract was extended and amended, and purported to have been entered into between the Company and "certain building trades and metal trades unions affiliated with the American Federation of Labor." The amended contract was not signed by the MTC or the BCTC, but by the individual craft unions and "American Federation of Labor." Because the words "building trades" were used in the amended con-

² At the oral argument before the Board, the AFL contended that, inasmuch as certain disputed issues between the Company and the AFL are pending before the War Labor Board, the CIO's petition should be dismissed under the principle enunciated in *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306. We find no merit in the AFL's contention. Mere pendency of proceedings before the War Labor Board does not bar an election where, as here, the exclusive bargaining representative is not newly certified or recognized, and has enjoyed ample opportunity since securing certification or recognition to demonstrate its effectiveness as a bargaining agent and to obtain substantial benefits for the employees. See *Matter of Allis-Chalmers Manufacturing Company*, 64 N. L. R. B. 750.

³ The Trial Examiner reported that the CIO submitted 1,181 application-for-membership cards and authorization cards, that 392 of the cards bore the names of persons whose names appeared on the Company's pay roll of September 9, 1945, containing 1,686 employees; and that the 392 cards were dated between June 1945 and September 1945. In view of union shop provisions in the prior contracts between the Company and the AFL, we find that the above showing of interest by the CIO is sufficient.

The AFL relies upon its prior contracts with the Company as evidence of its interest in this proceeding.

tract, the AFL contends that the BCTC was representing the construction employees under such contract. However, the terms of the Gulf Shipbuilding and Repair Zone Standard Agreement, to which the Company and the MTC are parties and which refers only to production and maintenance employees, was made an integral part of the 1941 contract. On the other hand, wages for construction employees throughout the New Orleans area were established by the Wage Adjustment Board of the Department of Labor in negotiations with the BCTC and the general contractors in the area. Although the Company was not a party thereto, it has followed these wage rates in recognizing the BCTC as the bargaining representative of its construction employees.⁴

The record further indicates that there are substantial differences between the wages and working conditions of the production and maintenance employees, and those of the construction employees. The construction employees are under separate supervision, have separate dressing rooms and toolrooms, and because of their representation by the BCTC, observe separate holidays. They receive a higher rate of pay and the basis for computing their overtime pay is different from that used for the production and maintenance employees. Although the construction employees occasionally perform production or maintenance duties, they retain their higher wage rates when so assigned. In view of the separate bargaining history and the differences in wages and working conditions, we shall exclude all construction employees from the appropriate unit.⁵

Foremen: The record is clear that the production and maintenance foremen are supervisory employees within the Board's customary definition. The AFL would include these employees on the ground that they are eligible to membership therein. Although foremen have been included in the bargaining unit of construction employees in accordance with an agreement between the Company and the BCTC, the past bargaining history of the production and maintenance employees between the Company and the MTC has excluded them. In accordance with the established policy of the Board of excluding supervisors from production and maintenance units, we shall exclude all foremen.

We find that all production and maintenance employees at the Company's Industrial Canal, City Park, and Bayou St. John, plants, in-

⁴ The AFL contends that during negotiation of a new agreement between the Company and the MTC concerning production and maintenance employees, the BCTC was a party thereto. However, on July 17, 1945, the secretary-treasurer of the MTC, in a letter to the Company stated, "It is not the intention of the Building Trades Council to become signatory to any Metal Trades Council contract as the Building Trades Council has form contracts which they require between general contractors and the Building Trades Council"

⁵ See *Matter of Kaiser Company, Inc.*, 53 N L R B. 880.

cluding leadermen and assistant foremen, but excluding construction employees, boat crews, plant-protection employees, production clerks, inspectors, office and clerical employees, foremen, and all other 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. The record reveals that a strike has been in effect since October 29, 1945.⁶ The AFL requests that the pay roll immediately preceding the strike be used in determining which employees should be eligible to vote, whereas the Company and the CIO contend that a current pay roll be used for such determination. None of the parties questions the employee status of the strikers. We find that the policies of the Act will best be effectuated by declaring eligible to vote all employees on the pay roll immediately preceding the date of our Direction of Election herein, as well as all employees on strike.

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 Higgins Industries, Inc., New Orleans, Louisiana, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 employees on strike, and including employees in

⁶ Although the Company has instituted liquidation proceedings, it is in the process of resuming operations and none of the parties object to the holding of an election at this time

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 Industrial Union Marine and Shipbuilding Workers of America, CIO, or by American Federation of Labor,⁷ for the purposes of collective bargaining, or by neither.

⁷ At the hearing the AFL requested to appear on any ballot or certification as set forth above. None of the parties objected to this request, which is hereby granted.