

IN the Matter of TODD SEATTLE DRY DOCKS, INC., and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL No. 10

Case No. R-147.—Decided June 28, 1937

Shipbuilding and Repairing Industry—Petition for Investigation and Certification of Representatives: dismissed where filed by representatives of small minority of employees; no controversy concerning representation.

Mr. Ralph T. Seward for the Board.

Mr. Roy Dumett, Mr. Cassius Gates, and Mr. Lawrence Bogle, of Bogle, Bogle & Gates, Seattle, Wash., for the Company.

Mr. Adam Beeler, of Seattle, Wash., for Industrial Union of Marine and Shipbuilding Workers of America, Local No. 10.

Mr. Samuel B. Bassett, of Vanderveer & Bassett, Seattle, Wash., for Metal Trades Council of Seattle and Vicinity, and for International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Local No. 174.

Mr. Frederick P. Mett, of counsel to the Board.

DECISION

STATEMENT OF CASE

On March 11, 1937, Industrial Union of Marine and Shipbuilding Workers of America, Local No. 10, hereinafter referred to as the I. U., filed a petition with the Regional Director for the Nineteenth Region (Seattle, Washington), alleging that a question affecting commerce had arisen concerning the representation of certain employees of Todd Seattle Dry Docks, Inc., Seattle, Washington, hereinafter referred to as Todd, and requesting the National Labor Relations Board to conduct an investigation and certify representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On March 24, 1937, the National Labor Relations Board, hereinafter referred to as the Board, authorized the Regional Director for the Nineteenth Region to conduct an investigation and to provide for a hearing in connection therewith. Pursuant to notices duly issued and served upon all the parties, a hearing was held in Seattle, Washington, beginning on April 16, 1937, before Robert M. Gates, duly designated by the Board as Trial Examiner. The Metal Trades Council of Seattle and Vicinity, hereinafter referred to as the Metal Trade Council, Local No.

174 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, hereinafter referred to as the Teamsters' Union, the I. U., and Todd were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing counsel for Todd filed a notice of special appearance and a motion to quash the proceedings¹ based upon objections to the Board's jurisdiction and upon objections to the validity of the Act under the Constitution. The motion to quash was denied by the Trial Examiner. This ruling is hereby affirmed. Thereafter, permission to do so having been granted by the Trial Examiner, counsel for Todd filed an answer to the petition of the I. U.² Therein Todd denied that any question had arisen concerning the representation of its employees as alleged in the petition and alleged that the Board had no jurisdiction in the premises. The answer further alleged that the Act is unconstitutional if it is held to apply to Todd. At the close of the hearing counsel for Todd filed a motion to dismiss the petition,³ predicated upon the same objections previously made in its motion to quash, and supplementing that motion orally moved, in the alternative, "for a dismissal on the ground that the evidence now introduced by the petitioner (I. U.) in direct and the Board, conclusively, in our opinion, establishes that, in no event, assuming the applicability of the Act and the validity of the statute, has a question arisen concerning or affecting commerce with respect to representation of the employees at Todd Seattle Dry Docks". Counsel for the Metal Trades Council and the Teamsters' Union joined in this motion to dismiss the petition "on the ground that the evidence is insufficient to substantiate the allegations of the petition". The motion was denied by the Trial Examiner. In view of our findings and conclusions hereinafter set forth, the Trial Examiner's ruling on this motion is hereby reversed.

During the course of the hearing the Trial Examiner made numerous other rulings on motions and on objections to the introduction of evidence. We have examined all of these rulings and find that no prejudicial errors were committed. They are hereby affirmed.

At the hearing the Board introduced a list containing the names of all the employees of Todd, except foremen, higher supervisory officials, office and clerical employees, who were employed at any time during the eight-week period beginning February 3, 1937, and ending March 31, 1937.⁴ By agreement between the parties this list was

¹ Respondent's Exhibit No. 1.

² Respondent's Exhibit No. 2.

³ Respondent's Exhibit No. 3.

⁴ Board Exhibit No. 12.

submitted to Lamont, president of Todd, for purposes of comparison, in the presence of a representative of the Board, with the membership records of the I. U. and the organizations affiliated with the Metal Trades Council.⁵ The comparison was completed two days after the hearing was closed. At that time Lamont returned the list of employees to the Regional Director for the Nineteenth Region, accompanied by his certification as to number of employees who were members of the I. U. and the organizations affiliated with the Metal Trades Council. This certification together with the accompanying letter to the Regional Director are hereby made part of the record in this case.

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

FINDINGS OF FACT

I. TODD SEATTLE DRY DOCKS, INC.

Todd Seattle Dry Docks, Inc., a Washington corporation having its principal office and place of business in the City of Seattle, State of Washington, is engaged in the business of repairing ships. It is one of the operating subsidiaries of the Todd Shipyards Corporation, a Delaware holding company.⁶ J. D. Reilly, one of its directors is also a director of the Todd Shipyards Corporation.

Todd's Seattle shipyard consisting of a yard, various shops and wharves, is the third largest shipyard on the Pacific Coast, and the largest private shipyard in the Pacific Northwest. It is equipped to do all kinds of repairs on all types and sizes of vessels. Most of the repairs are made by Todd on vessels in drydock⁷ or on vessels tied up along its wharves. Some repairs, however, are made outside its shipyard, that is, on vessels tied up along the wharves of shipping concerns on the Seattle waterfront.

Todd negotiates contracts for the repair of vessels through the Seattle agents of the various steamship companies. Separate contracts are negotiated for the repair of each vessel. Todd has no

⁵ The membership records of the various organizations were not made a part of the record in this case.

⁶ Other subsidiaries of the Todd Shipyards Corporation engaged in the business of repairing ships are the following:

Robins Dry Dock and Repair Co., Brooklyn, N. Y.

Tietjen and Lang Dry Dock Co., Hoboken, N. J.

Todd Mobile Dry Docks, Inc., Mobile, Ala.

Todd New Orleans Dry Docks, Inc., New Orleans, La.

Todd Galveston Dry Docks, Inc., Galveston, Tex.

⁷ Todd uses three drydocks in its operations. These have a capacity of 16,000, 15,000, and 3,000 tons, respectively. During its busy season, that is, during the Spring of the year, these drydocks are in constant use.

exclusive contract with any steamship company. Nearly all of the vessels repaired by Todd come to its shipyard from ports in the State of Washington and return to such ports immediately after being repaired before making a voyage. However, the majority of the vessels are engaged in intercoastal transportation; the remainder are engaged in coastal and foreign transportation. Vessels brought to the Todd shipyard from local ports usually do not carry any cargo, and carry only a skeleton crew; vessels brought to it during the course of a voyage carry a full cargo and crew while being repaired.

In its operations Todd uses a considerable amount of material such as machinery, steel plates, castings, shapes, angles, bolts, nuts, and wood. Approximately 25 per cent of all of the material used is obtained from sources outside the State of Washington. The majority of such material is brought to its shipyard by various steamship companies; the remainder is brought to local freight depots by various railroad companies and is picked up by Todd, or is delivered directly to the shipyard over a spur track connecting the shipyard with a line of the Northern Pacific Railroad Company. Machinery for installation in a vessel is customarily furnished by the owner of the vessel and is shipped to Todd by the manufacturer on order of such owner or is brought to the shipyard on board the vessel in which it is to be installed.

The number and the identity of employees employed by Todd fluctuates from day to day and from week to week. The average number of employees, excluding foremen, higher supervisory officials, office and clerical employees employed during each of the eight weeks immediately preceding March 31, 1937 is as follows:

For week ending February 10, 1937.....	528
For week ending February 17, 1937.....	702
For week ending February 24, 1937.....	854
For week ending March 3, 1937.....	996
For week ending March 10, 1937.....	1135
For week ending March 17, 1937.....	961
For week ending March 24, 1937.....	825
For week ending March 31, 1937.....	457

The numbers of skilled and unskilled workers employed at Todd vary according to the type of work being performed. The number of unskilled workers never amounts to more than 25 per cent of the total number of workers employed.

Todd's operations are performed upon instrumentalities of interstate and foreign commerce. Such operations have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States and with foreign countries.

II. THE ORGANIZATIONS INVOLVED

A. Industrial Union of Marine and Shipbuilding Workers of America, Local No. 10

The I. U. is a labor organization which admits to membership "all workers employed in the shipbuilding, ship repairing industry, and industries producing marine equipment" in Seattle and vicinity. Although there were originally numbered among its members employees of other shipyard employers, its membership at the time of the filing of the petition in this case consisted solely of men employed by Todd.

The I. U. was organized during May, 1935, by a group of steamfitters and pipefitters employed by Todd. All of the workers in this craft immediately joined. Thereafter some of the workers employed at Todd in the other crafts as well as some of the laborers joined. During the fall of 1935, several boilermakers dropped their membership in the I. U. and joined a local of the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, affiliated with the Metal Trades Council. On January 1, 1936, all of the steamfitters, pipefitters and their helpers, left the I. U. in a body and joined a local of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, affiliated with the Metal Trades Council. Shortly thereafter Todd orally entered into a closed shop agreement with the Metal Trades Council covering all skilled craftsmen and their helpers.⁸ Since the time of this closed shop agreement membership in the I. U. has consisted solely of unskilled workers or common laborers, such as dockmen, spraymen, tank cleaners, outside painters, scalers and scrapers, all generally referred to by Todd as cardmen, because of the method by which they are hired.⁹ At the hearing A. Fisherman, president of the I. U., testified that the I. U. had 200 members among the common laborers employed by Todd at the time of the filing of the petition.

Whether the I. U. at any time prior to January, 1936, had among its membership a majority of all the employees employed by Todd is not clear from the record. Witnesses for the I. U. testified that it did; their testimony, however, was contradicted by witnesses for the Metal Trades Council and for Todd. No membership records for

⁸ There are some indications in the record that this agreement may have only been an agreement for a preferential shop. Since the record abounds with testimony that the organizations affiliated with the Metal Trades Council had among their membership practically all of the skilled craftsmen and their helpers at that time, its practical effect was that of a closed shop agreement.

⁹ Unskilled workers or common laborers are generally hired by Todd on a day-to-day basis. They assemble at the yard gate every day and if chosen to work are given a card which they exchange for their pay after the day's work is completed.

the year 1935 were introduced by the I. U. at the hearing. Admittedly the I. U. has not had among its membership a majority of all of the employees of Todd since January, 1936.

Although the I. U. has at various times since its organization met with and discussed with Todd certain problems concerning the welfare of its members, such meetings and discussions have concerned themselves solely with the welfare of the common laborers. At no time since its organization has the I. U. bargained collectively with or sought to bargain collectively with Todd on behalf of all of the employees of Todd.

B. The Metal Trades Council of Seattle and Vicinity

The Metal Trades Council of Seattle and Vicinity is a labor organization affiliated with the Metal Trades Department of the American Federation of Labor and is composed of delegates from 20 labor organizations affiliated with it. Of the 20 organizations, the following have members among, and their combined jurisdiction extends to, all of the employees of Todd, except teamsters,¹⁰ supervisory, and clerical employees:

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, Locals No. 104, and No. 541.

International Association of Machinists, Local No. 79.

International Longshoremen's Association, Scalers, Dry Dock and Miscellaneous Waterfront Workers Local No. 38-138.

Sheet Metal Workers International Association, Local No. 99.

Brotherhood of Painters, Decorators, and Paperhangers of America, Local No. 300.

International Brotherhood of Blacksmiths, Drop Forgers, and Helpers, Local No. 106.

United Brotherhood of Carpenters and Joiners of America, Locals No. 1184 and No. 1272.

United Association of Journeymen, Plumbers and Steamfitters of the United States and Canada, Local No. 473.

International Brotherhood of Electrical Workers, Local No. 46.

International Union of Operating Engineers, Local No. 302.

The Metal Trades Council was organized in 1908 for the purpose of dealing with employers on behalf of the membership of its affiliated organizations. Since that time it has negotiated and entered into agreements covering wages, hours, and working conditions with

¹⁰Todd employs two members of the Teamsters' Union in its stores department. The Metal Trades Council does not dispute the jurisdiction of the Teamsters' Union over these men. The Metal Trades Council has in the past represented these two employees on behalf of the Teamsters' Union in negotiations with Todd. The Teamsters' Union was represented at the hearing by counsel for the Metal Trades Council.

employers in Seattle and vicinity. According to the testimony of E. M. Weston, secretary of the Metal Trades Council, the Metal Trades Council has regularly bargained collectively with Todd, on behalf of all of its employees, over a long period of years. His testimony was substantiated by witnesses for Todd.

In February, 1934, the Metal Trades Council submitted to Todd a proposed wage scale covering the rates of pay for all classifications of workers. After negotiations, Todd orally adopted the wage scale on April 28, 1934, and it remained in effect until January 1, 1937.

In February, 1936, Todd entered into the oral agreement referred to above, with the Metal Trades Council, granting to the latter a closed shop with respect to skilled craftsmen and helpers employed at Todd's. This agreement was still in effect at the time of the hearing.

During the latter part of 1936, the Metal Trades Council entered into negotiations with the Puget Sound Marine Construction Association, an association of shipyard employers, including Todd, for a new wage scale covering all of the employees in all of the shipyards in the Puget Sound area. On January 19, 1937, the employers, including Todd, through their association, granted to the Metal Trades Council a new wage scale¹¹ for all classifications of workers, retroactively effective as of January 1, 1937. This new wage scale by agreement of the parties is to remain effective until July 1, 1937.

While the above negotiations for a new wage scale were being carried on, the Metal Trades Council made demands upon Todd for a closed shop as to all common laborers, that is, all of the Todd employees not covered by the oral closed shop agreement entered into between Todd and the Metal Trades Council during February, 1936. A considerable number of these common laborers, referred to by Todd as cardmen, were members of the I. U.; some were members of the Scalpers, Dry Dock and Miscellaneous Waterfront Workers Local, No. 38-138, of the International Longshoremen's Association;¹² several were not affiliated with any labor organization. Todd, reluctant to grant the closed shop demands of the Metal Trades Council as to the common labor group, effected a temporary compromise whereby it agreed to hire its common laborers equally from the membership of the Scalpers Local and the I. U. Dissatisfied with this compromise arrangement, the Metal Trades Council, during the early part of 1937, renewed its demands for a closed shop as to the common labor group on behalf of the Scalpers Local. Todd did not immediately accede to

¹¹ Metal Trades Exhibit No 1.

¹² The Scalpers, Dry Dock and Miscellaneous Waterfront Workers Local No. 38-138, of the I. L. A., is a labor organization affiliated with the American Federation of Labor and with the Metal Trades Council. All of the common laborers (cardman) employed by Todd are eligible to membership in this organization.

these renewed demands. However, during the latter part of February or early part of March, 1937, the Metal Trades Council, having received authorizations from its affiliated organizations to deal in any way it sought fit, served an ultimatum on Todd, threatening to tie up its shipyard unless the closed shop demands as to the common laborers were granted by March 29, 1937. The filing of the petition herein on March 11, 1937, by the I. U., immediately followed the serving of this ultimatum. On March 29, 1937, Todd granted the closed shop demands of the Metal Trades Council.

The number of common laborers who were refused employment as a result of the granting of the closed shop by Todd is not clear from the record. The I. U. claims that all of its 200 members were affected. The Metal Trades Council and Todd claim that only about 75 common laborers were affected. Upon being refused employment members of the I. U. began picketing the Todd shipyard. Such picketing continued throughout the hearing in this case.

On April 2, 1937, all of the common laborers employed as dockmen, dropped their membership in the I. U. and joined a local of the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, affiliated with the Metal Trades Council, and immediately returned to work.

At the hearing, Weston claimed that the Metal Trades Council has always been and still is the duly designated representative of a majority of the employees employed by Todd. Witnesses for Todd substantiated his testimony. Witnesses for the I. U., however, claimed that the Metal Trades Council has never been the duly designated representative of a majority of the employees employed by Todd.

III. WHETHER A QUESTION CONCERNING REPRESENTATION HAS ARISEN

The I. U., the Metal Trades Council, and Todd, having stipulated at the hearing¹³ "that the appropriate unit for collective bargaining within the meaning of Section 9 (a) and (b) of the National Labor Relations Act at the Todd Seattle Dry Docks, Inc., should comprise all employees of that company except foremen and higher supervisory officials, clerical and office employees and janitors, and that in the event that an election is held by the National Labor Relations Board in the course of this proceeding, the vote should be taken upon a plant-wide basis among employees in the said unit"; the only question before us for determination is whether a question concerning the representation of the employees in the aforesaid unit has arisen which would warrant our taking further action in this proceeding to ascertain and certify to the parties' representatives for the purposes of collective bargaining.

¹³ See Board Exhibit No. 11.

In support of its allegation in the petition that a question concerning representation had arisen, the I. U. alleged that it represented 75 per cent of the employees of Todd; that it had sought to bargain collectively with Todd on behalf of all its employees; and that Todd had refused to bargain collectively with it "on the ground that the various craft unions belonging to the American Federation of Labor also claim jurisdiction over these employees". The allegation that the I. U. had sought to bargain collectively with Todd on behalf of all of its employees and that Todd had refused to do so, is not supported by the evidence. It was clearly shown at the hearing that Todd at all times when requested, met and bargained collectively with the representatives of the I. U., and that all negotiations between Todd and the I. U. concerned themselves solely with the common laborers employed by Todd.

As stated above, the petition in this case was filed immediately after the Metal Trades Council served the closed shop ultimatum on Todd. Considering the evidence in the record in the most favorable light to the I. U., that organization had approximately 200 members among the common laborers employed at Todd at that time. During the week immediately preceding and the week immediately following the date of the filing of this petition Todd employed approximately 1000 men. That there existed at that time among the common laborers who were members of I. U. a question as to their tenure of employment, in view of the closed shop ultimatum served on Todd, is clear. That a question concerning the representation of all of the employees of Todd had arisen at that time, or at any other time, is not clear.

In his certification respecting membership of Todd's employees in the I. U. and in the Metal Trades Council,¹⁴ Lamont, president of Todd, reported that his comparison of the records of the various organizations with the list of employees, containing the names of 1753 employees, showed that 168 employees were members of the I. U. and that 1076 were members of the various organizations affiliated with the Metal Trades Council. This certification accounts for the affiliation of 1244 of the 1753 employees. The certification and the accompanying letter of Lamont give no definite clue as to the affiliation of the remaining 509 employees. Presumably, their affiliation could not be checked because the records of the various labor organizations submitted to Lamont were incomplete. Since during this period Todd was operating as a Metal Trades Council closed shop, insofar as skilled workers and their helpers were concerned, and employed approximately three times as many skilled.

¹⁴ See Statement of Case, *supra*.

workers and helpers as it did common laborers, it is fair to assume that the most of these 509 employees were either members of the organizations affiliated with the Metal Trades Council or were employed by Todd through such organizations. In any event, considering the certification of Lamont alone, the overwhelming majority of employees employed by Todd at any time during the period between February 3, 1937 and March 31, 1937, were members of organizations affiliated with the Metal Trades Council.

Without admitting that the organizations affiliated with the Metal Trades Council have among their membership a majority of the employees employed by Todd, the I. U. throughout the hearing took the position that even though the records of such organizations show such a majority, such records do not reflect the true desires of the employees with respect to the designation of a representative for the purposes of collective bargaining in view of certain alleged coercive activities ascribed to Todd. Throughout the hearing the I. U. claimed that from the time of its organization, the supervisory officials of Todd had coerced its members employed by Todd to drop their membership and to join the organizations affiliated with the Metal Trades Council. The I. U. urged that if an election were held by the Board, the majority of the employees of Todd would designate the I. U. as their representative.

Admittedly, the I. U. has not had among its membership a majority of the employees employed by Todd since January, 1936, just shortly before the original closed shop agreement was made. That it did have among its membership a majority at any time prior to January, 1936, is unlikely. We have fully considered the testimony presented by the I. U. with respect to the coercion of its members by Todd both before and after January, 1936, and we find the testimony unpersuasive. Furthermore, the contention of the I. U. that if an election were held the majority of the employees employed by Todd would designate it as their representative, despite their membership in organizations affiliated with the Metal Trades Council, finds no support in the record. We firmly believe that the majority for the Metal Trades Council is and has always been based on the wishes of the employees of Todd.

Upon the entire record we are compelled to find that the I. U. represents only a small minority of the employees of Todd and that the overwhelming majority of such employees have, by their membership in the various organizations affiliated with the Metal Trades Council, designated the Metal Trades Council as their representative for the purposes of collective bargaining with Todd. Under all the circumstances we conclude that there has not arisen any question concerning the representation of the employees employed by Todd.

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. All of the employees employed by Todd Seattle Dry Docks, Inc., except foremen, higher supervisory officials, clerical and office employees, and janitors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

2. A question concerning the representation of the employees in the aforesaid unit has not arisen within the meaning of Section 9 (c) of the National Labor Relations Act.

DISMISSAL OF PETITION

Pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is directed that the petition filed by the Industrial Union of Marine and Shipbuilding Workers of America, Local No. 10, with the Regional Director for the Nineteenth Region on March 11, 1937, be, and it hereby is, dismissed.