

In the Matter of PENNSYLVANIA SHIPYARDS, INC. and LOCAL METAL
TRADES COUNCIL

Case No. R-427.—Decided February 3, 1938

Shipbuilding and Repairing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal of employer to recognize and bargain with petitioning union until question of representation is determined by Board—*Unit Appropriate for Collective Bargaining:* all employees, excluding clerical and supervisory employees and watchmen; no controversy as to—*Representatives:* proof of choice: petition authorizing petitioning union to represent signers in collective bargaining; comparison of with employment records—*Certification of Representatives:* upon proof of majority representation.

Mr. Warren Woods, for the Board.

Mr. L. B. Coppinger, of Houston, Tex., for the Company.

Mr. Charles H. Poe, of Houston, Tex., Mr. L. G. Fenn, of Tulsa, Okla., and Mr. J. N. Davis, of Kansas City, Kans., for the Council.

Mr. A. George Koplou, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On September 18, 1937, Local Metal Trades Council, of Beaumont, Texas, herein called the Council, filed with the Regional Director for the Sixteenth Region (Fort Worth, Texas) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Pennsylvania Shipyards, Inc., Beaumont, Texas, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On October 12, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 16, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Council. Pursuant to the notice, a hearing was held on November 4 and 5, 1937, at Beaumont, Texas, before Madison Hill, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel and the Council by its authorized representatives and all participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pennsylvania Shipyards, Inc., is a Delaware corporation, all the issued stock of which is owned by American Republics Corporation. The only offices and plant of the Company are in Beaumont, Texas.

The Company is engaged in the building and repair of ships. Shipbuilding comprises about 35 per cent of its business, and the repair of ships the remaining 65 per cent. Most of its business is with oil companies. The Company builds ships of several kinds, including tugboats, barges for drilling wells in shallow water, and tankers for service on the Great Lakes and other places outside the State of Texas. Among the ships it repairs are seagoing tankers and a few foreign ships. Ships built by the Company are documented under the laws of the United States and are registered at the Custom House at Port Arthur, Texas.

The gross business of the Company during 1936 amounted to \$1,091,488.83. Of this sum \$997,196.85, or approximately 91 per cent, consisted of work on new and repaired vessels delivered within the State of Texas; \$94,291.98, or approximately 9 per cent, consisted of deliveries made outside the State. From January 1, 1937 to October 31, 1937, the gross revenue was \$1,992,376. Deliveries at the Company's yards were in the amount of \$1,891,707 constituting approximately 95 per cent of the total business, and deliveries outside the State of Texas \$100,669 or approximately 5 per cent.

The Company has its own wharves, with a small drydock and with a marine railway to pull ships out of the water.

The materials used by the Company consist chiefly of steel plates, shapes, valves and fittings, pipe, propellers, forgings, anchors, etc.

For the most part these materials come from outside the State of Texas and are shipped to the Company's plant by common carrier.

II. THE ORGANIZATION INVOLVED

Local Metal Trades Council of Beaumont, Texas, is composed of international unions affiliated with the American Federation of Labor. The Council itself is a part of the Gulf Coast Metal Trades District Council, which operates under a special charter issued by the Metal Trades Department of the American Federation of Labor. The various international unions, representing 11 crafts in the Company's plant, admit to membership those workers coming under their particular jurisdictions, exclusive of supervisors, clerical help, and watchmen.

III. THE QUESTION CONCERNING REPRESENTATION

Sometime in the month of July 1937, certain of the unions in the Council requested the Company to meet with union representatives for conference and for recognition in accordance with the terms of the Act. The Company informed the unions that the matter had been turned over to its attorney. On July 24, 1937, the unions sent a letter to the attorney requesting recognition as the bargaining agents for certain groups of employees of the Company. The attorney replied on August 2, 1937, stating that the Company would recognize and bargain with the accredited agents of its employees, but that the Company could not for itself determine whether the various crafts seeking recognition as appropriate units for collective bargaining were in fact the proper units for such purpose. The position of the Company has been that it will withhold recognition until the Board determines the appropriate unit.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Council in its petition for investigation and certification describes the bargaining unit which it claims appropriate as "all em-

ployees except supervisory forces,"¹ and further states that the petition is filed on behalf of "all classifications, except supervisory and clerical forces."¹ At the hearing it was intimated by the Council's representatives that watchmen should likewise be excluded. No further question was raised at the hearing as to the appropriate unit, the Company according neither preference nor opposition to any particular group.

We find that all of the employees of the Company, excluding clerical and supervisory employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Company's pay-roll list for the period September 16 to 22, 1937, shows 654 employees, including 20 clerical and 4 watchmen, or a total of 630 employees exclusive of supervisory and clerical forces and watchmen.² The Company's pay-roll list for November 3, 1937, shows a total of 502 employees, including 26 clerical employees and watchmen, or 476 employees exclusive of supervisory and clerical forces and watchmen.³

The Council produced at the hearing a petition⁴ entitled "Authorization for Representation Under the National Labor Relations Act" which contained 472 signatures and was dated September 11, 1937. At the hearing representatives of the Company and the Council were designated to check the signatures upon the petition against employment records of the Company containing signatures of employees. Out of 472 names, 446 were found to be valid signatures of employees and 26 were found to be questionable.⁵ In addition, union representatives testified to the procurement of signatures and to the authenticity of some of the questionable signatures. The Company did not dispute the genuineness of these signatures nor the findings of the committee which checked the names.

We find that the Council has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

¹ Board Exhibit No. 2.

² Union Exhibit No. 6.

³ Union Exhibit No. 7.

⁴ Union Exhibit No. 1.

⁵ Union Exhibit No. 4.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Pennsylvania Shipyards, Inc., Beaumont, Texas, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Company, excluding clerical and supervisory employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Local Metal Trades Council of Beaumont, Texas, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Local Metal Trades Council, of Beaumont, Texas, has been designated and selected by a majority of the employees of Pennsylvania Shipyards, Inc., Beaumont, Texas, excluding clerical and supervisory employees and watchmen, as their representative for the purposes of collective bargaining and that pursuant to the provisions of Section 9 (a) of the Act, Local Metal Trades Council, of Beaumont, Texas, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.