

In the Matter of ALABAMA DRYDOCK & SHIPBUILDING Co. and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL No. 18

In the Matter of ALABAMA DRYDOCK & SHIPBUILDING Co. and LOCAL METAL TRADES COUNCIL OF MOBILE, ALABAMA

*Cases Nos. R-472 and R-473.—Decided February 8, 1938*

*Shipbuilding and Repairing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize either of rival organizations as exclusive representative of its employees; controversy concerning unit appropriate for collective bargaining—*Unit Appropriate for Collective Bargaining:* plant-wide; wage differentials; occupational differences—*Election Ordered:* pay-roll period selected which will insure eligibility to greatest possible number of employees.

*Mr. Berdon M. Bell*, for the Board.

*Mr. Harry H. Smith*, of Mobile, Ala., for the Company.

*Mr. A. P. Smith* and *Mr. C. H. Poe*, both of Mobile, Ala., for the Metal Trades Council.

*Mr. Yelverton Cowherd*, of Birmingham, Ala., for the Industrial Union.

*Mr. Walter T. Nolte*, of counsel to the Board.

## DECISION

AND

## DIRECTION OF ELECTION

### STATEMENT OF THE CASE

On October 5, 1937, Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18, herein called the Industrial Union, filed with the Regional Director for the Fifteenth Region (New Orleans, Louisiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Alabama Drydock and Shipbuilding Company, Mobile, Alabama, 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 6, 1937, Local Metal Trades Council of Mobile, Alabama, herein called the Metal Trades Council, filed a similar petition. On November 6,

1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Sections 3 and 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of the two cases for the purpose of hearing, and also ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 6, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Industrial Union, and upon the Metal Trades Council. Pursuant to the notice, a hearing was held on November 26, 1937, at Mobile, Alabama, before William P. Webb, the Trial Examiner duly designated by the Board. The Board, the Company, and the Industrial Union were represented by counsel, and the Metal Trades Council, by its representatives. 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

The Company was incorporated under the laws of the State of Alabama on January 1, 1917. Its principal office and the two dry-docks which it owns and operates are all located at Mobile, Alabama. While the Company's major activity is the repair of ships of all kinds and sizes, including ocean-going passenger and cargo ships up to 10,000 tons, it also builds barges for the transportation of freight on the Mississippi, the Gulf of Mexico, and the South Atlantic seaboard. According to a stipulation executed by the Company and introduced in evidence,<sup>1</sup> "A few of these (barges) are used in interstate commerce". The Company repairs a considerable number of foreign ships, including British, German, and Russian. In the stipulation referred to above, the Company stated that it was engaged in repairing and overhauling ships which are used in transporting passengers and freight in interstate and foreign commerce. During the past year the Company has overhauled or repaired 226 ships and built 19 barges.

<sup>1</sup> Board's Exhibit No. 2.

Of the materials, equipment, and machinery used in the construction of barges, 2 per cent on the basis of cost is obtained outside the State of Alabama. Less than five per cent of the machinery, equipment, and materials used in the repair of ships is purchased outside the State. In the past year a total of approximately 761 out-of-State shipments have been received from rail, ship, truck, and air lines.

The Company is the only drydock and shipbuilding concern in the port of Mobile, Alabama, with adequate facilities for handling the larger ships plying the Gulf waters in that vicinity.

## II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all employees of the Company in the port of Mobile, Alabama, engaged in mechanical trades pertaining to ship repairing and shipbuilding, excluding clerical and office workers, draftsmen, checkers, timekeepers, foremen, and other supervisory officials, and all employees receiving pay by the week or month on a salary basis.

Local Metal Trades Council of Mobile, Alabama, is a labor organization affiliated with the American Federation of Labor, which does not admit individuals to its membership directly. It is composed of the elected representatives of the locals of 11 international unions all of which are affiliated with the American Federation of Labor. These unions are: International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America; International Brotherhood of Electrical Workers; International Union of Operating Engineers; International Association of Machinists; United Association of Journeymen Plumbers and Steam Fitters; United States and Canada Amalgamated Association of Sheet Metal Workers; United Brotherhood of Carpenters and Joiners; Brotherhood of Painters, Decorators and Paper Hangers of America; International Union of Common Labor; Heat and Frost Workers; and International Brotherhood of Blacksmiths. Through membership in one of the 11 unions, all employees of the Company in the port of Mobile, Alabama, excluding office, clerical, and supervisory employees, may be represented on the Metal Trades Council.

## III. THE QUESTION CONCERNING REPRESENTATION

On August 14, 1937, the Metal Trades Council addressed a letter to the Company asking recognition as the exclusive collective bargaining agent for its employees. The Company's letter of reply, dated August 20, 1937, reads in part as follows:

Although we have no knowledge as to how many of our employees you may represent, nevertheless, we shall be willing to

confer with you as representing only such of our employees as have authorized you to do so.

The Industrial Union sent a letter to the Company on October 6, 1937, making a request similar to that previously made by the Metal Trades Council and asserting representation of a majority of the employees, to which the Company replied on October 11, 1937, in language almost identical with that quoted above from the letter of August 20, 1937.

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 petition of the Industrial Union recites that it considers all employees of the Company in the port of Mobile, Alabama, excluding clerical and office workers, draftsmen, checkers, timekeepers, foremen and other supervisory officials, and all employees receiving pay by the week or month on a salary basis, as constituting a unit appropriate for the purposes of collective bargaining.

The Metal Trades Council, in its petition, claims that all employees of the Company, excluding supervisory officials, constitute an appropriate unit.

It appears from the evidence that the two organizations considered their respective claims for an appropriate unit in conflict only with respect to the inclusion or exclusion of the office and clerical force and thus both are claiming an industrial, plant-wide unit. The Industrial Union stated that office and clerical workers were not eligible to membership in its organization and maintained that such employees should be excluded from the bargaining unit. The Metal Trades Council argued for the inclusion of all but supervisory officials in the appropriate unit; advancing as its reason for such position that the office and clerical workers, while not eligible for membership in any of the organizations currently represented on the Metal Trades Council, would be eligible for such representation whenever they became properly organized on their own account.

There is admittedly no form of organization among such employees of the Company at the present time and there is no evidence that either labor organization has been chosen by any of them as their representative for collective bargaining. In view of the existing situation, it would appear to be inadvisable for us to deviate from our general policy of excluding clerical and office workers from a bargaining unit which is made up principally of workers engaged in production.

It appears from the evidence that the Company has a class of employees known as leadermen. The Industrial Union attempted to establish through the testimony of a veteran employee that the powers and duties of leadermen are such as to place them within the category of supervisory employees, thereby excluding them from the appropriate unit as defined by both labor organizations. The Metal Trades Council offered no evidence on this point other than through cross-examination of the Industrial Union's witness. Neither labor organization specifically excludes leadermen from its membership. In the stipulation entered into with the Board,<sup>2</sup> the Company listed 10 leadermen among a total of 1911 employees.

The position of a leaderman is in the nature of a gang boss or leader of a gang of men. No leaderman is continually at the head of the same gang of workmen, both because gangs are formed and broken up according to the nature and extent of the work in the yards from time to time and because most leadermen act in that capacity only part of the time. No leaderman has the power to hire or discharge. In fact, discharges apparently result only when a series of complaints against an employee have been made to the foremen by various leadermen with whom he has worked. From the testimony it appears that there are two types of leadermen, those paid on an hourly basis and those paid on a salary basis. Hourly paid leadermen spend part of their time working as ordinary employees. They work as leadermen only when the number of gangs in the yards increases to such an extent that some gangs are without leadermen. When working as ordinary employees, so-called leadermen have no unusual rights and privileges other than possible preference with regard to employment. Hourly paid leadermen may be temporarily laid off during slack periods along with ordinary employees. Salaried leadermen, however, have a more permanent status. They never work as ordinary employees, they are the only employees working steadily as leadermen, and they are not subject to temporary lay-offs because of fluctuation in work. While there is often no substantial difference between salaried and hourly paid employees with respect to collective bargaining, it appears in the instant case that

<sup>2</sup> Board's Exhibit No. 2.

the status of the salaried leadermen is such as to give them interests differing from those shared by hourly paid leadermen and all other employees and which relate them more closely to the management. We feel, therefore, that salaried leadermen should be excluded from the bargaining unit, but that the hourly paid leadermen should be included therein.

The Industrial Union, in its petition, claims that all employees paid on a salary basis should be excluded from the appropriate unit. No evidence was offered to show what, if any, employees would be thereby excluded. Nor was any testimony introduced to show that the basis of payment alone constituted a sufficient ground for exclusion of employees from the bargaining unit. We find, therefore, that, in describing the appropriate unit, words excluding all employees paid on a salary basis should not be used.

We find that all employees of the Company in the port of Mobile, Alabama, excluding clerical and office workers, draftsmen, checkers, timekeepers, leadermen paid on a salary basis, foremen and other supervisory officials, 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 Industrial Union began organizing the Company's plant in January 1937. It claims 700 members among employees of the Company and an additional 100 authorizations to act as collective bargaining agent. No membership cards or authorizations were offered in evidence.

The Metal Trades Council has been in existence four or five years, during which time some of the organizations represented by it have had members in the employ of the Company. An intensive organization drive was begun by the Metal Trades Council in March 1937. It claims to represent 675 of the Company's employees by membership or authorization. No written evidence to substantiate this claim was offered.

That there is overlapping of membership and authorized representation is admitted by both labor organizations.

We find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation.

The record indicates a lack of agreement between the Company and the two labor organizations on the proper method for determining eligibility to vote in the election. Since all of the Company's business is done on a single job contract basis, the number of employees

actually working is constantly fluctuating according to the amount of work in the yards. The weekly pay-roll sheets show not only the names of all persons who have earned wages during the preceding seven days but also the names of all other persons whom the Company considers currently available for employment, if and when sufficient work is available. An attempt is made by the Company to divide the work as evenly as possible among all persons whose names appear on the pay-roll sheets. However, it is possible for an individual's name to remain on the pay roll for weeks or even months without his having earned any wages whatever. It is customary for the Company to revise its pay-roll sheets every six or eight months, removing therefrom the names of all individuals who have earned no wages since the last preceding revision. The last of such revisions prior to the date of the hearing was April 1, 1937.

In view of this pay-roll situation the two labor organizations agreed that those persons who appear as having earned wages between July 15 and August 15 and between August 15 and September 15, 1937, should be eligible to vote in the event that the Board ordered an election. In justification of this method for determining eligibility, it was stated that the period chosen was one during which representatives of the two organizations contacted the largest number of persons in the Company's employ and that any other period would be unfair to both of them.

The Company objected to the proposed method, maintaining that, because of the constant fluctuation and rotation of employment, a longer period was necessary to prevent the exclusion of interested individuals. A period of six months was set as a necessary minimum by the Company. A period beginning with April 1, 1937, and ending with the date of the hearing would be acceptable to it. The Company's contention was that the period chosen by the labor organizations might exclude individuals who had been with the Company for some time but who did not happen to work during that two-month period. It was also stated that a substantially greater number of individuals would be included by taking a six-month rather than a two-month period.

An additional factor affecting this question is the somewhat seasonal nature of the Company's business. Summer months are generally slack periods while activity is at its highest during the winter. There is evidence that August 1937, was above the average for that month but not equal to an ordinary winter month. Pay rolls for the weeks ending August 18, 25, September 1, 8, and 15, 1937, which were submitted in evidence by the Company, show that employment in those five weeks was respectively 1421, 1340, 1329, 1245, and 1249. The total number of different individuals who earned wages during the period

is approximately three-fourths of the total of names carried on the pay rolls at that time.

Under the circumstances it appears that neither the method proposed by the labor organizations nor the method contended for by the Company will insure absolute accuracy in the determination of eligibility for voting. However, absolute accuracy is probably unattainable here. Our problem is to adopt a period of time which will be likely to insure eligibility to the greatest possible number of employees having a direct and substantial interest in the choice of representatives. We feel that, while the periods chosen by the labor organizations may be too short, there is nothing in the record to indicate that a six-month period is the absolute minimum. We therefore adopt the pay rolls of the Company for the weeks ending June 16, 1937 to October 13, 1937, inclusive, as proper for use in determining eligibility to vote. Those eligible to vote shall be all persons, other than clerical and office workers, draftsmen, checkers, timekeepers, leadermen paid on a salary basis, foremen and other supervisory officials, whose names appear upon the aforesaid pay rolls of the Company as having earned wages during any week for work in the port of Mobile, Alabama.

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 Alabama Drydock and Shipbuilding Company, Mobile, Alabama, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of Alabama Drydock and Shipbuilding Company in the port of Mobile, Alabama, excluding clerical and office workers, draftsmen, checkers, timekeepers, leadermen paid on a salary basis, foremen and other supervisory officials, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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

IT IS HEREBY DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Alabama Drydock and Shipbuilding Company, Mobile, Alabama, an election by secret ballot shall be conducted within fifteen

(15) 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, Section 9, of said Rules and Regulations, among all persons, other than clerical and office workers, draftsmen, checkers, timekeepers, leadermen paid on a salary basis, foremen and other supervisory officials, whose names appear upon the pay rolls of the Company for the weeks ending June 16, 1937 to October 13, 1937, inclusive, as having earned wages during any week for work in the port of Mobile, Alabama, to determine whether they desire to be represented by the Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18, or by Local Metal Trades Council of Mobile, Alabama, for the purposes of collective bargaining, or by neither.