

In the Matter of ATLANTIC BASIN IRON WORKS *and* INDUSTRIAL UNION
OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL NO. 13

Case No. R-566.—Decided February 18, 1938

Boat Repairing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative; strike; controversy as to appropriate unit; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* production and maintenance employees excluding engineering department employees requiring special training; occupational difference—*Election Ordered*

Mr. Richard J. Hickey, for the Board.

Cullen & Dylkman, by *Mr. Harry G. Hill*, of Brooklyn, N. Y., for the Company.

Mr. Hyman N. Glickstein, of New York City, for Local 13.

Mr. R. N. Johnson, *Mr. James P. Nolan* and *Mr. Joseph Moriarity*, of New York City, for the I. L. A.

Mr. Daniel J. McVarish, of New York City, for the Marine Workers Council.

Abraham M. Fisch, by *Mr. David E. Kleinman*, of New York City, for the Marine Workers District Council.

Miss Edna Loeb, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 22, 1937, Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, herein called Local 13, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Atlantic Basin Iron Works, Brooklyn, New York, 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 25, 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 December 7, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon Local 13, upon the International Longshoremen's Association, herein called the I. L. A., and upon the Marine Workers Metal Trades District Council, herein called the Marine Workers District Council. The I. L. A., the Marine Workers District Council, and the Marine Workers Metal Trades Council, herein called the Marine Workers Council, are labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 15 and 20, 1937, at New York City before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, and Local 13 were represented by counsel, as were the I. L. A., the Marine Workers District Council, and the Marine Workers Council, herein referred to jointly as the A. F. of L. affiliates. All parties 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 a motion 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

Atlantic Basin Iron Works, a New York corporation, has its principal office and place of business in Brooklyn, New York, and is engaged in the repair of steamships and in the manufacture of valves, pump parts, piston rods, shafts, and Diesel engine parts. At the hearing, the Company stipulated that 82 per cent of its repair work is done upon ocean-going steamships, 8.5 per cent upon coastal line vessels, 5.9 per cent upon intercoastal line vessels, and 3.6 per cent on New York Harbor craft. Of its manufactured products 38.8 per cent is sold outside of the State of New York. The gross business of the Company for the last fiscal year amounted to over \$500,000. During the same period of time, the expenditure of the Company for raw materials, 63.6 per cent of which are purchased and shipped from States other than New York, totaled over \$300,000. The Company further stipulated that it is engaged in interstate commerce and conceded the jurisdiction of the Board.

We find that the aforesaid repairing operations of the Company are performed upon instrumentalities which engage in trade, traffic, transportation, and commerce among the several States, and between the several States and high seas and foreign countries.

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, is a labor organization affiliated with the Committee for Industrial Organization admitting to its membership production and maintenance employees, excluding all salaried persons in executive or supervisory positions, timekeepers, janitors, draftsmen and engineering department employees.

International Longshoremen's Association, Marine Workers Metal Trades Council, and Marine Workers Metal Trades District Council are labor organizations affiliated with the American Federation of Labor. The record does not disclose the conditions of admission to membership in these organizations.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to June 14, 1937, Local 13 organized the production and maintenance employees of the Company. Advising the Company that it represented a majority of these employees, the Union attempted to bargain in their behalf. The Company, through Bernard A. Moran, its president, refused to enter into an agreement with Local 13. Although Moran asserted that he did not know whether or not Local 13 represented the majority of the Company's employees, the record indicates that he did not request proof of its membership. He stated that he would sign no contract with Local 13 until a competitor of his had done so.

On June 14, 1937, a general strike was called in the shipyards in the metropolitan area of New York. As a result of this strike in which a number of the employees of the Company participated, the Company was forced to close its plant. Only a few supervisory employees and a single mechanic remained at work. During the course of the strike and after its voluntary termination by Local 13 on August 18, 1937, further unsuccessful attempts were made to negotiate with the Company.

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

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We found above that the repairing operations of the Company are performed upon instrumentalities which engage in trade, traffic, trans-

portation, and commerce among the several States and between the several States and the high seas and foreign countries. The Company's employees in the appropriate unit described in Section V below are thus engaged in operations which constitute a necessary and integral part of such commerce; such repairing is essential to the regular and effective functioning of such instrumentalities.

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, transportation, and commerce among the several States, and between the several States and high seas and foreign countries, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

Local 13 contends that all employees of the Company, excluding salaried persons in executive or supervisory positions and snappers who do not work with tools, and also excluding timekeepers, clerical and office employees, janitors and janitresses, draftsmen, and engineering department employees constitute a unit appropriate for the purposes of collective bargaining.

The A. F. of L. affiliates agree to the exclusion of executive and supervisory employees and snappers who do not work with tools, as well as to the exclusion of janitors and janitresses, but contend that office and clerical employees, timekeepers, and engineering department employees who are not executives should be included. They argue that these workers are as much a part of the shipyard as are the production and maintenance employees, and that since some of them desire to be represented by the A. F. of L. affiliates, they should be included in the bargaining unit.

As it is obvious that their status and function are essentially different from the status and function of employees who do manual labor, our usual practice has been to exclude office and clerical employees as well as timekeepers from a unit largely composed of production and maintenance employees. Since no affirmative showing has been made by the A. F. of L. affiliates, nor any compelling arguments advanced by them as to why we should depart from this practice, we shall exclude office and clerical employees and timekeepers from the unit.

Local 13 contends that engineering department employees have special problems of their own as professional or semi-professional workers. The record does not disclose the nature of their duties. If any of the employees of this department are engaged in technical or experimental work requiring special training or skill, they will not be included in the same unit with the production and maintenance

employees. All employees of the engineering department whose duties do not involve such special training or skill will, however, be included in the unit.

The A. F. of L. affiliates further assert that the Company employs no draftsmen. No evidence was introduced on this issue, however, nor did the A. F. of L. affiliates claim that draftsmen should be included in the unit. Therefore, in conformance with our general policy, we shall name draftsmen among the classes excluded from the appropriate unit.

We find that the production and maintenance employees of the Company, excluding salaried persons in executive or supervisory positions and snappers who do not work with tools, and also excluding timekeepers, clerical and office employees, janitors and janitresses, draftsmen, and engineering department employees who are engaged in technical or experimental work requiring special training or skill, 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

G. R. Miller, secretary of the Company, testified that on December 17, 1937, during an adjournment of the hearing, clerks of the Company brought to the office of the Regional Director pay rolls of the Company for the weeks ending June 9, June 16, September 22, and December 8, 1937, and that on December 17 and 18, 1937, the clerks, representatives of Local 13, and counsel for the Board compared the pay rolls and the membership application cards of Local 13. No representative of the A. F. of L. affiliates participated in the making of this comparison. Miller further testified that, according to the report made to the Company by one of the clerks, the comparison showed that the names of the majority of the employees of the Company as shown by each pay roll, exclusive of the employees such as supervisory and clerical employees, appeared on the membership application cards. Although Miller's testimony was admitted in evidence subject to proof by Local 13 of the validity of the application cards, no such proof was adduced, nor were the cards or pay rolls of the Company introduced in evidence. It is not clear that, in making the comparison, only employees in the unit which we have found appropriate were considered.

Under the circumstances all parties seemed to agree and we find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot.

Although the A. F. of L. affiliates did not submit in evidence proof

of the membership which they claimed to have among the employees of the Company, they expressed a desire to participate in an election. All parties agreed that the A. F. of L. affiliates should be designated on the ballots as the American Federation of Labor.

It was further agreed that in the event an election was directed all the employees within the appropriate unit, as hereinabove described, shall be eligible to vote, whose names appeared on the pay rolls of the Company either for the week ending June 9, 1937, or for the week ending September 22, 1937. We find this determination of eligibility satisfactory.

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 Atlantic Basin Iron Works, Brooklyn, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance employees of the Company, excluding salaried persons in executive or supervisory positions and snappers who do not work with tools, and also excluding timekeepers, clerical and office employees, janitors and janitresses, draftsmen, and engineering department employees who are engaged in technical or experimental work requiring special training or skill, 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, 49 Stat. 449, 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 Atlantic Basin Iron Works, Brooklyn, New York, 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 Second Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees of the Company, excluding salaried persons in executive or supervisory positions and snappers who do not work with tools, and also excluding timekeepers, clerical and office

employees, janitors and janitresses, draftsmen, and engineering department employees who are engaged in technical or experimental work requiring special training or skill, who were named on the pay rolls of the Company either for the week ending June 9, 1937, or for the week ending September 22, 1937, to determine whether they desire to be represented by Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, affiliated with the Comitée for Industrial Organization, or the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

February 25, 1938

On February 18, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction, under the direction and supervision of the Regional Director for the Second Region (New York City). The Board, having been advised by the Regional Director for the Second Region that a longer period within which to hold an election is necessary, hereby amends the Direction of Election issued on February 18, 1938, by striking therefrom the words "within fifteen (15) days from the date of this Direction" and substituting therefor the words "within twenty-five days (25) days from the date of this Direction."