

In the Matter of UNITED SHIPYARDS, INC. and LOCALS No. 12, No. 13,
No. 15 OF THE INDUSTRIAL UNION OF MARINE AND SHIPBUILDING
WORKERS OF AMERICA

Case No. R 567.—Decided March 2, 1938

Shipbuilding and Repairing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning organization as exclusive representative of its employees; controversy concerning unit appropriate for collective bargaining—*Unit Appropriate for Collective Bargaining:* three plants; organization of plants incomplete, union claim of majority in few, permitted; functional coherence; community of interest; central management of labor and personnel policies by employer; similarity of wage scales and working conditions; interchangeability of employees, claim of substantial membership by rival organizations in all three plants—*Election Ordered:* payroll period before and after strike selected to insure eligibility to greatest number of employees.

Mr. Richard Hickey, for the Board.

Col. Kenneth Gardner and *Mr. J. Ward O'Neill*, of New York City, for the Company.

Mr. Hyman N. Glickstein, of New York City, for the Industrial Union.

Mr. Abraham M. Fisch, by *Mr. David E. Kleinman*, of New York City, and *Mr. J. T. Farrell*, of New York City, for the Council.

Mr. R. M. Johnston, of New York City, for the I. L. A.

Mr. David Y. Campbell, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 6, 1937, Industrial Union of Marine and Shipbuilding Workers of America, herein called the Industrial Union, 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 the United Shipyards, Inc., New York City, 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. A charge of unfair labor practices having been filed previously by the Industrial Union against the same Company, on October 22, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 10. (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, directed that the cases be consolidated for the purposes of a hearing, and acting pursuant to Section 9 (c) of the Act of Article III, Section 3, of said Rules and Regulations, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 30, 1937, the Industrial Union filed an amended petition alleging that all production and maintenance employees, except foremen, assistant foremen, and draftsmen, in the Crane, Morse, and Fletcher plants of the Company constitute one unit appropriate for purposes of collective bargaining, and that all production and maintenance employees, except foremen, assistant foremen, and draftsmen, in the Sisco plant constitute another unit appropriate for purposes of collective bargaining.

On December 7, 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 Marine Workers Metal Trades District Council, Port of New York and Vicinity, herein called the Council, and the International Longshoremen's Association, herein called the I. L. A., both named in the amended petition as labor organizations claiming to represent employees directly affected by the investigation. On December 10, 1937, the Board, acting pursuant to Article II, Section 37 (c), of National Labor Relations Board Rules and Regulations—Series 1, as amended, granted an order of severance of the representation case and the unfair labor practices case. On December 13, 1937, the Regional Director issued an amended notice of hearing, copies of which were duly served on all parties.

Pursuant to the notice and the amended notice, a hearing was held on December 20, 1937, and on January 22, 1938, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, the Industrial Union, and the Council were represented by counsel and participated in the hearing. The I. L. A. appeared by counsel on the first day of the hearing, but failed to participate further, although duly notified. 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 hearing, the Industrial Union further amended the amended petition, without objection, to exclude the Sisco plant from the proceedings. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evi-

dence. 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

United Shipyards, Inc. is a New York corporation, incorporated in 1928, having its principal office located in New York City and its four plants located in the Port of New York. The Sisco plant is located at Mariner's Harbor, Staten Island, New York. The Crane and Morse plants are located in Brooklyn, New York, and the Fletcher plant at Hoboken, New Jersey.

The Company has facilities for building vessels up to 500 feet in length and repairs all types of vessels. At the Sisco plant the great majority of the shipbuilding is done and approximately 28 per cent of the vessels repaired are worked on at that plant. The Crane plant handles about 28 per cent of the vessels repaired and some shipbuilding is done, chiefly on smaller types of vessels. The Fletcher and Morse plants do only repair work.

The Company is one of the two largest shipbuilding and repair concerns in the Port of New York and one of the largest on the Atlantic coast. While the dollar volume of business is not shown, during the first 11 months of 1937, the Company repaired a total of 1395 vessels in all four plants, over 79 per cent of which were ocean-going, intercoastal, and coastwise vessels. Over 90 per cent of the materials used by the Company in its operations in its three New York plants and its New Jersey plant are shipped to such plants through the channels of interstate commerce by railroads, lighters and trucks from various points of production outside the States of New York and New Jersey, respectively. The Company concedes that it is engaged in interstate commerce in such a way as to subject it to the jurisdiction of the Board.

We find that the aforesaid repairing and building 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 is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all employees of the Company, excluding salaried persons in executive or supervisory posi-

tions not working with tools, timekeepers, office and clerical workers, janitors and janitresses, draftsmen, and engineering department employees. Locals No. 12, No. 13, and No. 15 of the Industrial Union have jurisdiction over the entire Port of New York.

Marine Workers Metal Trades District Council, Port of New York and Vicinity, is a labor organization affiliated with the American Federation of Labor. It admits to membership all employees of the Company, excluding certain employees such as executives and supervisors, and office and clerical workers.

International Longshoremen's Association is a labor organization affiliated with the American Federation of Labor. It does not appear what employees of the Company are admitted to membership, nor does the record show to what extent the I. L. A. claims members in any or all the plants of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

About June 1937, the Industrial Union, claiming to represent a majority of the employees of the Company in all three plants directly affected by this proceeding, attempted to bargain with the Company. The record indicates that the Company's refusal to recognize the Industrial Union as the exclusive bargaining agent of the employees in all three plants led to a strike in June 1937, among its employees in the three plants, as well as in the Sisco plant. The Council claims to represent a substantial number of employees of the Company in each of the three plants, particularly in the Crane and Morse plants. As stated before, the extent of the claims of the I. L. A. does not appear in the record.

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

V. THE APPROPRIATE UNIT

At the hearing it was stipulated that the appropriate bargaining unit should include all employees in the said unit except all salaried

employees and executives or supervisors, who do not work with tools; foremen; timekeepers; draftsmen; watchmen; employees of the engineering department, including technical employees in that department; janitors and janitresses; office and clerical employees; snappers who are paid on a salaried basis; all technical employees working on a salary.

The Industrial Union contends that the appropriate unit should consist of the three plants, Crane, Morse, and Fletcher. The Council claims that each of the three plants should constitute a separate unit.

The Industrial Union attempts to distinguish the Crane, Morse, and Fletcher plants from the Sisco plant on the ground that the latter is a shipbuilding, while the former are ship-repair plants. The Industrial Union introduced testimony at the hearing that shipbuilding is more continuous work than ship repair, and that there is a greater variety of wage rates in shipbuilding than in the latter. Testimony was also adduced to show the control over the labor and personnel policies of the three plants by the central management of the Company, particularly with reference to the determination and establishment of rates of pay. There was also evidence on behalf of the Industrial Union that a substantial number of employees were transferred and worked interchangeably among the three plants. The record is silent as to whether or not the same situation applies also to the Sisco plant. The Company contends this transferring among its plants is restricted to men with special qualifications. It was also shown that prior and during the strike which occurred among the employees of the Company a joint committee negotiated with the Company on behalf of employees in the three plants. It was not shown, however, nor can it be fairly assumed, that the joint committee did not also negotiate on behalf of the employees in the Sisco plant, particularly in view of the widespread character of the strike and the claims of the Industrial Union set forth in the original and amended petitions.

We see no merit in the purported distinction between employees working in ship repair and employees working in shipbuilding, in so far as collective bargaining is concerned. The record shows that the same crafts and the same degrees of skill are involved, and the interests and the functions of the men are substantially identical. Moreover, the record discloses that some shipbuilding is done at one of the three plants, the Crane plant, and that at the Sisco plant almost 28 per cent of the repair work is done.

These facts would ordinarily lead us to find that all four plants of the Company, including the Sisco plant, constitute an appropriate unit for the purposes of collective bargaining. In this case, however, neither the Industrial Union nor the Council desire such a unit. Under these circumstances, where the state of organization has not

reached a point where any union is in a position to assert a majority in all the plants of an employer, we have held that one or more of the plants may constitute an appropriate unit.¹ Here the Industrial Union claims that three out of the four plants constitute a single unit and the Council contends that each of the three plants constitute a separate unit. Since each labor organization claims a substantial membership among employees in all three plants, since the evidence indicates at least some transfer of employees among the three plants, and since labor and personnel policies of the three plants are determined by a central management of the Company, we are of the opinion that the three plants constitute a single appropriate unit.

We find that the above-described employees stipulated as eligible in the three plants 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

During the period between the beginning of the hearing on December 20, 1937, and the continuance of the hearing on January 22, 1938, a check was made of the Company's May and September, 1937, pay rolls for each of the three plants by representatives of the Industrial Union and the Council, in the presence of representatives of the Company and under the supervision of a representative of the Board. On the basis of the check the testimony of the Industrial Union is that it had signed application cards for a substantial majority of employees in each of the three plants during each week of the two months.

While the Council participated in the above-mentioned pay-roll check, it did not check its claims as to membership as against the total number of employees in any plant during any one weekly pay-roll period. Rather, the testimony of the Council only set forth the total of its membership claims in each of the three plants during the entire months of May and September 1937, without any reference to the total number of employees in each of the three plants during either entire month. It appears, however, that the membership claimed by the Council is a substantial number of the employees in each of the three plants. Since the claims of the Industrial Union and of the Council, respectively, are not submitted on the bases of comparable pay-roll periods, and since the Council failed to

¹In the Matter of *R C A Communications, Inc.*, and *American Radio Telegraphists' Association*, 2 N. L. R. B. 1109; In the Matter of *Remington Rand, Inc.*, and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626.

show the numerical relationship between its claimed membership and the total employees in the three plants, it is not possible to determine definitely upon the basis of the record the extent of any conflict there may be between the claims of the Industrial Union and of the Council, respectively. However, the record indicates that there is some such conflict. No signed application cards were introduced in evidence nor was there any verification of the signatures. Moreover, it is unknown what further conflicts, if any, may be raised by the claims of the I. L. A. as to membership, not being disclosed in the record.

We believe that, under these circumstances the question concerning representation can best be resolved by holding an election by secret ballot to determine the proper representatives for collective bargaining.

The petition was filed while the strike was still in progress. Since almost three months elapsed between the last normal pay-roll period before the strike and the resumption of normal operations by the Company after the strike, and because of the fluctuations in employment in the three plants, we find that it is proper to determine eligibility to vote in the election on the basis of the weekly pay rolls for the months of May and September, 1937, and to hold that any person employed by the Company within the appropriate unit in any pay-roll period in either of said months shall be eligible to vote.

At the hearing, all parties agreed that if an election were held the ballot should include three spaces: one for the Industrial Union; one for the American Federation of Labor, including all its craft unions; and one for "or neither". Later at the hearing, the Industrial Union expressed a desire that the ballot provide only for a choice between the Industrial Union and the American Federation of Labor. We are of the opinion that the ballot should provide for the three choices in accordance with the procedure originally agreed upon.

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 United Shipyards, Inc., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company at its Crane, Morse, and Fletcher plants, excluding all salaried employees and executives or supervisors, who do not work with tools; foremen; timekeepers; draftsmen; watchmen; employees of the engineering department, including technical employees in that department; janitors and janitresses; office and clerical employees; snappers who are paid on a salaried basis;

and all technical employees working on a salary, constitute a single 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 United Shipyards, Inc., an election by secret ballot shall be conducted within twenty (20) 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 for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees of United Shipyards, Inc., employed in its three plants, namely the Crane, Morse, and Fletcher plants, in any pay-roll period in either the month of May or the month of September 1937, excluding salaried employees and executives or supervisors, who do not work with tools; foremen; timekeepers; draftsmen; watchmen; employees of the engineering department, including technical employees in that department; janitors and janitresses; office and clerical help; snappers who are paid on a salaried basis; and all technical employees working on a salary, to determine whether such employees in the three said plants desire to be represented by Industrial Union of Marine and Shipbuilding Workers of America, affiliated with the Committee for Industrial Organization, or by the American Federation of Labor, for the purposes of collective bargaining, or by neither.