

IN the Matter of IRA S. BUSHEY & SONS, INC., and INDUSTRIAL UNION
OF MARINE & SHIPBUILDING WORKERS OF AMERICA, LOCAL No. 13

Case No. R-519

CERTIFICATION OF REPRESENTATIVES

March 11, 1938

STATEMENT OF THE CASE

On September 22, 1937, Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, herein called the 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 Ira S. Bushey & Sons, 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. 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 the Union, upon the International Longshoremen's Association, and upon the Marine Workers Metal Trades District Council, affiliated with the American Federation of Labor, herein called the Metal Trades Council. Pursuant to the notice, a hearing was held on December 15, 1937, adjourned from day to day, and completed on December 22, 1937, at New York City before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel and participated in the hearing. Although the record indicates that representatives of the American Federation of Labor were present at the hearing, they refrained from making any formal appearance in behalf of the Metal Trades Council, nor did they take any part in the proceeding.

By Decision dated January 28, 1938,¹ the Board directed the Regional Director for the Second Region, acting as agent for the Board, and subject to said Rules and Regulations, to conduct an election by secret ballot among the production and maintenance employees of the Company, who were named on the pay rolls of the Company either for the week ending June 9, 1937, or for the week ending September 21, 1937, excluding all persons in executive and supervisory positions, including foremen, assistant foremen, whether salaried or paid on an hourly basis, and excluding timekeepers, office and clerical employees, janitors, janitresses, draftsmen and technical engineering department employees, watchmen, garagemen, and all other employees who are paid on a salaried basis, to determine whether they desired to be represented by the Union, for the purposes of collective bargaining, or by no union.

Pursuant to the Direction of Election, the Regional Director conducted an election by secret ballot on February 16, 1938. As to the results of the balloting, the Intermediate Report showed the following:

Total number eligible to vote.....	318
Total number of ballots cast.....	182
Total number of ballots counted.....	170
Total number of votes in favor of Industrial Union of Marine & Shipbuilding Workers, Local No. 13.....	112
Total number of votes in favor of no union.....	58
Total number of blank ballots.....	0
Total number of void ballots.....	3
Total number of challenged votes.....	9

Following the election, the Metal Trades Council filed a protest to the conduct of the election, dated February 17, 1938, alleging that it had not been included on the ballot although the Board had been notified in writing that it desired to appear in any and all elections to be held.

It appears that on February 14, 1938, two days before the election was scheduled to be held, Mr. Sidney Schiffman, an attorney representing the Metal Trades Council, called at the office of the Regional Director to protest the failure of the Board to include the organization on the ballot. Mr. David Schatzow, Field Examiner for the Second Region, explained to him that the omission was due to the fact that the Metal Trades Council had made no formal appearance at the hearing, although duly served with notice thereof. Mr. Schiffman was advised that the Board alone had authority to amend the Direction of Election and that it would be necessary for the Metal Trades Council to contact the Board in Washington, D. C., immediately if the organization desired to present a request for such amend-

¹ 4 N. L. R. B. 1181.

ment. After having telephoned Mr. Wm. J. Daly, secretary of the organization, in regard to the matter, Mr. Schiffman informed Mr. Schatzow that no such action would be taken as to the instant election, but stated that a letter would be written to the Board regarding future elections. Thereafter, the Regional Director received a letter from Mr. Daly, dated February 14, 1938, referring to the fact that the Metal Trades Council had not been named on the ballot which was to be used in the election to be conducted at the Ira S. Bushey plant and stating that it was desirous of having its name on the ballot "in any and all future elections, now decided upon, or to be decided upon at a later date."

It is clear from the foregoing that although the Metal Trades Council was duly notified of the holding of the hearing, it refrained from becoming a party to the proceeding or from participating therein. Moreover, although informed by the Regional Office as to the proper procedure for presenting to the Board any request for an amendment of the Direction of Election, the Metal Trades Council failed to present any such request. We find, therefore, that the protest of the Metal Trades Council is without merit.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by 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 CERTIFIED that Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, has been designated and selected by a majority of the production and maintenance employees of Ira S. Bushey & Sons, Inc., New York City, excluding all persons in executive and supervisory positions, including foremen, assistant foremen, whether salaried or paid on an hourly basis, and excluding timekeepers, office and clerical employees, janitors, janitresses, draftsmen and technical engineering department employees, watchmen, garagemen, and all other employees who are paid on a salaried basis, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, 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.