

In the Matter of PIER MACHINE WORKS, INC. and INDUSTRIAL UNION
OF MARINE AND SHIP BUILDING WORKERS OF AMERICA, LOCAL NO. 13

Case No. R-662.—Decided May 23, 1938

Ship Repairing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, including assistant foremen known as snappers, and excluding certain categories of employees; stipulation as to—*Election Ordered—Certification of Representatives.*

Mr. Mark Lauter, for the Board.

Mr. Herman Golman and *Mr. Harry G. Liese*, of counsel, of New York City, for the Company.

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

Mr. William A. Crane, of Brooklyn, N. Y., for the Council.

Mr. Francis Hoague, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 1, 1937, Industrial Union of Marine and Ship Building 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 Pier Machine Works, Inc., 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 December 10, 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 March 29, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union, and upon International Longshoreman's Association, herein called the I. L. A., and Marine Workers Metal Trades District Council of the Port of New York, herein called the Council, labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice and an amended notice duly served upon all the above-mentioned parties, a hearing was held on April 5, 1938, at New York City, before Webster Powell, the Trial Examiner duly designated by the Board. The Board, the Company, the Union, and the Council were represented and participated in the hearing. The I. L. A., in a letter to the Regional Office of the Board in New York City, stated that it did not represent or claim to represent any of the employees of the Company. Therefore, the I. L. A. did not appear at the hearing. Full opportunity to be heard, to examine and to cross-examine the 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

Pier Machine Works, Inc. is a New York corporation, having its office and principal place of business in Brooklyn, New York. It is engaged at Brooklyn and nearby ports in repairing ocean-going vessels in foreign trade. Although most of the Company's work is done on ships of Barber Co. Inc., of which it is a subsidiary, some work is done on ships of other lines. Eighty-five per cent of the materials purchased by the Company come from outside the State of New York. A list of these materials includes iron, steel, brass, copper, asbestos, lumber, and other products. The Company conceded that it was engaged in commerce within the meaning of Section 2 of the Act.

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine and Ship Building Workers of America, Local No. 13, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production and maintenance employees of the Company, excluding supervisory and clerical employees, engineers, draughtsmen, janitors, and chauffeurs.

Marine Workers Metal Trades District Council of the Port of New York is affiliated with the Metal Trades Department of the American Federation of Labor and is a labor organization composed of a number of craft unions. Production and maintenance employees of the Company, excluding supervisory and clerical employees, are eligible for membership in particular craft unions affiliated with the Council.

III. THE QUESTION CONCERNING REPRESENTATION

On July 28, 1937, the Union sent a letter to the Company in which it claimed the membership of a majority of the Company's employees and requested a conference to discuss terms and conditions of employment on behalf of all the employees. An identical letter was sent to the Company on September 17, 1937. Both letters were unanswered at the date of the hearing. The manager of the Company stated at the hearing that the Company is not prepared to deal with any labor organization until it is certified by the Board as the exclusive bargaining representative of its employees.

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 described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Company, the Union, and the Council stipulated at the hearing that the production and maintenance workers of the Company, including assistant foremen known as snappers, and excluding foremen, executives, supervisory employees, employees who do not work with tools, office and clerical employees, timekeepers, draughtsmen, watchmen, engineers, chauffeurs, janitors, janitresses, and salaried employees, constitute a unit appropriate for the purposes of collective bargaining.

We find that the production and maintenance workers of the Company, including assistant foremen known as snappers, and excluding foremen, executives, supervisory employees, employees who do not work with tools, office and clerical employees, timekeepers, draughtsmen, watchmen, engineers, chauffeurs, janitors, janitresses, and sal-

aried employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policy of the Act.

VI. DETERMINATION OF REPRESENTATIVES

The pay roll of the Company for the week preceding the hearing showed that there were 36 employees in the appropriate unit. The Union introduced in evidence membership cards of 20 employees in the unit. It was conceded by the Council that the signatures were genuine. The business representative of the Council testified that five employees in the unit were members of craft unions affiliated with the Council. Two of these 5 employees claimed by the Council were also claimed by the Union, and were among the 20 employees whose membership cards in the Union were already in evidence. Thus there are only 18, or exactly half of the employees, who unquestionably desire the Union to represent them. While the Council's claim to membership is not supported by the most convincing evidence, it is sufficient to cast doubt upon the Union's claim to represent a majority of the employees in the appropriate unit.

We are of the opinion that the question of representation that has arisen can best be determined by an election by secret ballot. All the parties agreed to the use of the pay roll for the week ending March 31, 1938, for determining eligibility to vote in the election.

At the hearing the business representative of the Council requested that the name of the American Federation of Labor appear on the ballot. We will include the American Federation of Labor in the designation of the Council on the ballot. We will also include in the designation of the Union on the ballot its affiliation with the Committee for Industrial Organization.

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 Pier Machine Works, Inc., Brooklyn, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

2. All production and maintenance workers of Pier Machine Works, Inc., including assistant foremen known as snappers, and excluding foremen, executives, supervisory employees, employees who do not work with tools, office and clerical employees, timekeepers, draughtsmen, watchmen, engineers, chauffeurs, janitors, janitresses,

and salaried employees, 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 the Pier Machine Works, Inc., 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 for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among all the production and maintenance workers employed by Pier Machine Works, Inc., during the pay-roll period ending March 31, 1938, including assistant foremen known as snappers, and excluding foremen, executives, supervisory employees, employees who do not work with tools, office and clerical employees, timekeepers, draughtsmen, watchmen, engineers, chauffeurs, janitors, janitresses, and salaried employees, to determine whether or not they desire to be represented by Industrial Union of Marine and Ship Building Workers of America, Local No. 13, affiliated with the Committee for Industrial Organization, or by Marine Workers Metal Trades District Council of the Port of New York, affiliated with the Metal Trades Department of the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

June 27, 1938

On May 23, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled case. The Direction of Election directed that an election by secret ballot be conducted under the direction and supervision of the Regional Director for the Second Region (New York City) among all the production and maintenance workers employed by Pier Machine Works, Inc., Brooklyn, New York, during the pay-

roll period ending March 31, 1938, including assistant foremen known as "snappers", and excluding foremen, executives, supervisory employees, employees who do not work with tools, office and clerical employees, timekeepers, draughtsmen, watchmen, engineers, chauffeurs, janitors, janitresses, and salaried employees, to determine whether they desired to be represented by Industrial Union of Marine and Ship Building Workers of America, Local No. 13, affiliated with the Committee for Industrial Organization, or by Marine Workers Metal Trades District Council of the Port of New York, affiliated with the Metal Trades Department of the American Federation of Labor for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on June 7, 1938, by the said Regional Director. On June 8, 1938, the said Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued, and on June 9, 1938, served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote.....	36
Total number of ballots cast.....	32
Total number of ballots counted.....	29
Total number of votes in favor of—	
Industrial Union of Marine and Ship Building Workers of America, Local No. 13, C. I. O.....	19
Marine Workers Metal Trades District Council, A. F. of L.....	9
Neither Union.....	1
Total number of void ballots.....	0
Total number of blank votes.....	0
Total number of challenged votes.....	3

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, herein called the Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Industrial Union of Marine and Ship Building Workers of America, Local No. 13, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the production and maintenance employees of Pier Machine Works, Inc., Brooklyn, New York, including assistant foremen known as "snappers," and excluding foremen, executives, supervisory employees, employees who do not work with tools, office and

clerical employees, timekeepers, draughtsmen, watchmen, engineers, chauffeurs, janitors, janitresses, and salaried employees, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, Industrial Union of Marine and Ship Building Workers of America, Local No. 13, affiliated with the Committee for Industrial Organization, 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.