

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.—Decided January 28, 1938*

*Boat Building and Repair—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning union as exclusive representative; prior strike—Unit Appropriate for Collective Bargaining: stipulation—Election Ordered*

*Mr. Richard J. Hickey, for the Board.*

*Mr. Frank B. Devlin, of New York City, for the Company.*

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

*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 & 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. Pursuant to the notice, a hearing was held on December 15, 1937, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The hearing was adjourned from day to day

and completed on December 22, 1937. The Board, the Company, and the Union were represented by counsel and 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 is a New York corporation, having its plant and principal offices in Brooklyn, New York. It is engaged in the building and repair of canal boats, tug boats, and harbor craft, and normally employs from 225 to 250 production and maintenance workers.

During the last fiscal year, the gross sales of the Company amounted to more than \$500,000, and it expended over \$250,000 for raw materials. The chief raw material purchased by the Company is steel, innumerable steel products and types of equipment being employed in the business. Almost all of these materials are shipped to the Company from states other than New York including Connecticut, Massachusetts, Indiana, Michigan, Ohio, Pennsylvania, Illinois, Maryland, New Jersey, and Wisconsin.

The vessels built and repaired by the Company ply in the New York Harbor carrying coal, grain, lumber, oil products, brick, lime, and other like commodities, loading and unloading these goods at various points on the New York and New Jersey shores. They also ply in the Long Island Sound and some of them make deliveries on the shores of the State of Connecticut. Frequently, these harbor craft pull alongside of ocean going vessels to be loaded with the products which these vessels have brought from various foreign or domestic ports. Some of the boats dealt with by the Company go up the Hudson River through the Erie Canal to Buffalo, New York, sometimes traveling as far as Erie, Pennsylvania, while others go along the New England coast to Maine.

It is estimated that over 80 per cent of the business done by the Company is repair work on canal boats. The record indicates that the Company is like a service station in that vessels in the stream of commerce halt momentarily for repairs and then continue on their way.

Although by a motion to dismiss the petition the Company originally asserted that the Board had no jurisdiction over it, this objection was

withdrawn during the course of the hearing, and the Company entered into a stipulation with the Union as to the terms of an election.

## II. THE ORGANIZATION INVOLVED

Industrial Union of Marine & Shipbuilding 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 office workers, clerical and supervisory employees, as well as all other workers employed on a salaried basis.

## III. THE QUESTION CONCERNING REPRESENTATION

Prior to June 14, 1937, the Union 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, however, refused either to recognize the Union or to bargain with it.

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. During the course of the strike and after its voluntary termination by the Union on August 18, 1937, the Union made further unsuccessful efforts to negotiate with the Company.

We find that a question has arisen concerning representation of the 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 and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

The Union and the Company by stipulation have indicated their agreement as to the appropriate unit. We find in accordance with such stipulation that the production and maintenance employees of the Company, excluding all persons in executive and supervisory positions, including foremen, assistant foremen, whether salaried or paid on an hourly basis, and exclusive of timekeepers, office and clerical employees, janitors, janitresses, draftsmen and technical en-

gineering department employees, watchmen, garagemen, and all other employees who are paid on a salaried basis, 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 of self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

Although the Union introduced into evidence a list of names which its counsel stated were taken from membership application cards of the Union, neither the cards nor any pay rolls of the Company were submitted in evidence. We find, therefore, that the question concerning representation which has arisen can best be resolved by an election by secret ballot.

It was stipulated and agreed by the parties that in the event an election was directed, all the employees within the appropriate unit, as herein above described, shall be eligible to vote whose names appeared on the payrolls of the Company either for the week ending June 9, 1937, or for the week ending September 21, 1937. We find this determination of eligibility satisfactory. The stipulation provides that the ballot shall contain two spaces or boxes, one to read "Industrial Union of Marine & Shipbuilding Workers of America, Local No. 13", and the other to read "No Union".

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 representation of employees of Ira S. Bushey & Sons, Inc., New York City, 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 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, constitute a unite 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 Re-

lations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of the 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 Ira S. Bushey & Sons, Inc., of New York City, 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 production and maintenance employees of the Company, 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, garage-men, and all other employees who are paid on a salaried basis, 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, to determine, in accordance with the stipulation, whether they desire to be represented by Industrial Union of Marine & Shipbuilding Workers of America, Local No. 13, for the purposes of collective bargaining, or by no union.