

In the Matter of WORTH STEEL COMPANY and UNITED STEELWORKERS
OF AMERICA, C. I. O.

Case No. 4-R-1200.—Decided October 28, 1943

Mr. Aaron Finger, of Wilmington, Del., for the Company.

Mr. M. H. Goldstein, of Philadelphia, Pa., for the C. I. O.

Mr. John J. Morris, Jr., of Wilmington, Del., for the Independent.

Mr. William R. Cameron, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Steelworkers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Worth Steel Company, Claymont, Delaware, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Geoffrey J. Cunniff, Trial Examiner. Said hearing was held at Wilmington, Delaware, on September 27, 1943. The Company, the C. I. O., and United Steel Workers of Claymont, Delaware, Inc., herein called the Independent, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Worth Steel Company is a Delaware corporation, having its principal place of business at Claymont, Delaware, where it is engaged in the manufacture, sale, and distribution of steel plate. During the year 1942 the Company purchased approximately 670,000 tons of raw

materials having an approximate total value of \$12,000,000, of which 99 percent was obtained from points outside the State of Delaware. During the same period, the Company's manufactured products amounted in volume to approximately 270,000 gross tons and in value to approximately \$17,000,000, of which 97 percent was shipped to points outside the State of Delaware. The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Steel Workers of Claymont, Delaware, Inc., is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On July 20, 1943, the C. I. O. notified the Company by letter of the filing of its petition, stating therein that such filing was because of the Company's failure to recognize it as the exclusive bargaining representative of the Company's employees. The Company replied, also by letter, that before it could recognize any organization as such bargaining representative, it must have "satisfactory evidence" that such union actually represented a majority of the employees.

The record discloses that the Independent was organized and incorporated in 1937, and continuously since that time has bargained with the Company and has handled grievances as the representative of its employees. Although the Independent, shortly after its organization, sought to obtain a written agreement with the Company, the Company refused; since then no written contract between the Company and representatives of its employees has been executed. However, certain wage increases and other changes in the conditions of employment have been granted by the Company, which the Independent sought to show, and which it may be assumed for the purposes of this decision, were brought about by its activity and influence. The Independent contends that this history of collective bargaining now constitutes a bar to an election. We have heretofore held, however, in similar situations wherein no written contract had been executed, that such a bargaining history does not preclude a determination of representatives.¹ We therefore find that the history of

¹ See *Matter of Union Switch and Signal Company*, 30 N. L. R. B. 922; *Matter of The Texas Company*, 33 N. L. R. B. 1214; see also *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

collective bargaining by the Independent, in the instant case, is no bar to a determination of representatives at this time.

A statement of the Regional Director, introduced in evidence at the hearing, indicates that the C. I. O. and the Independent each represents a substantial number of employees in the unit hereinafter found to be appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The C. I. O. seeks a unit composed of all production and maintenance employees of the Company, including crane repairmen, screw men, checkers in the shipping department, mill recorders, weigh girls, railroad conductors, head flangers, and first-men in the Company's various departments, but excluding executives, foremen, assistant foremen, turn foremen, pit foremen, labor foremen, draftsmen, guards, watchmen, listing clerks, mill providers, and all other clerical employees. The Independent and the Company substantially agree with the C. I. O. as to the minor exclusions and inclusions sought by it, but both contend that all clerical employees should be included in the general production and maintenance unit.

The Independent bases its contention for the inclusion of clerical employees in the production unit upon the history of collective bargaining hereinabove set forth, and asserts that at all times it has dealt with the Company as representative not only of the production and maintenance employees but also of all the clerical employees. We do not, however, regard the history of collective bargaining disclosed herein as sufficient to stabilize and define the unit.³ The Independent also bases its contention upon the fact that the clerical employees receive from the Company treatment similar to the production and maintenance employees as to manner and rates of pay, hours, seniority privileges, vacations, sickness and death benefits, and other conditions of employment.⁴ The record indicates, however, that the clerical em-

² The Regional Director reported that the C. I. O. submitted 629 applications for membership, of which 443 bear the apparently genuine original signatures of persons whose names are on the Company's pay roll of July 31, 1943, containing the names of 1,058 employees in the unit claimed by the C. I. O. to be appropriate. Of the 443 membership applications, 100 were undated and the balance dated from September 1, 1942, to August 21, 1943.

The Regional Director further reported that the Independent submitted a sworn statement of its secretary, indicating that during the period from August 1, 1942, to July 31, 1943, he had received dues from 604 members of that organization. Of the 604 names appearing on the membership list, 435 are of persons whose names are on the above-mentioned pay roll, containing the names of 1,197 employees in the unit claimed by the Independent to be appropriate.

³ See cases cited in footnote 1.

⁴ At the hearing an informal petition, purporting to have been signed by many of the clerical employees was introduced into evidence. In this petition the Board is asked to

ployees, as a whole, perform duties that are essentially different from those of the production and maintenance employees, and work for the most part, in offices separate from the production areas of the plant. In view of all the circumstances, and of our customary practice of excluding clerical employees from a production and maintenance unit, we shall exclude the clerical employees.

As stated above the C. I. O., however, would include mill recorders, weigh clerks, and checkers in the shipping department. The mill recorders, whose work is clerical in nature, do not work in an office but at the weigh house, where their duty is to record the customer's order number, and the number of plates, as the plates go over the scales. The weigh clerks, also called weigh girls, weigh and mark all the products that come to the scales. The checkers in the shipping department are engaged in checking and loading material, and a considerable portion of their time is spent in manual labor. It appears that the work of mill recorders, weigh clerks, and checkers in the shipping department is more closely allied to the work of the production and maintenance employees; we shall include them in the unit.

We find that all production and maintenance employees of the Company including floor bosses, crane repairmen, railroad conductors, head flangers, all other first-men, screw men, mill recorders, weigh clerks, and checkers in the shipping department, but excluding executives, foremen, assistant foremen, turn foremen, pit foremen, labor foremen, draftsmen, guards, watchmen, samplers in the laboratory department, listing clerks, mill providers, all other clerical employees, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

grant the clerical employees the right to vote for "the sole bargaining agent for the employees of the Worth Steel Company." The petition expresses concern lest the clerical force be "eliminated," and states that the clerical employees feel that it would be discriminating to deprive them of their vote. It may be noted in this connection that no labor organization is in the present case seeking to represent the clerical employees in a separate unit. The decision herein in no sense precludes the clerical employees from such representation by any labor organization which they may select.

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 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Worth Steel Company, Claymont, Delaware, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or by United Steel Workers of Claymont, Delaware, Inc., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.