

In the Matter of WISCONSIN STEEL WORKS, INTERNATIONAL HARVESTER COMPANY and UNITED STEELWORKERS OF AMERICA, C. I. O.,  
ON BEHALF OF LOCAL UNION No. 1178

*Case No. 13-R-1986.—Decided November 18, 1943*

*Messrs. Frank B. Schwarer, Robert E. Dickman, and George Hodge, of Chicago, Ill., for the Company.*

*Mr. George E. Mischeau, of Chicago, Ill., for the United.*

*Messrs. Walter Butler, Claude Crowe, Joseph R. Roscetti, Sam Alago, Harry Eller, and Harold Nommensen, of Chicago, Ill., for the Progressive.*

*Mrs. Augusta Spaulding, 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., on behalf of Local Union No. 1178, herein called the United, alleging that a question affecting commerce had arisen concerning the representation of employees of International Harvester Company, Chicago, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert R. Bissman, Trial Examiner. Said hearing was held at Chicago, Illinois, on October 23, 1943. The Company, the United, and Progressive Steel Workers Union, herein called the Progressive, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Progressive moved that the Board dismiss this proceeding on the ground that a contract between the Company and the Progressive constituted a bar. For reasons which appear in Section III, below, the motion is denied. 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:

53 N. L. R. B., No. 132.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

International Harvester Company was formerly engaged in the design, manufacture, assembly, repair, sale, and distribution of motor trucks, farm tractors, industrial tractors, and farm implements. At the present time the Company is generally engaged in the production of war material for the United States. The Company operates plants in Illinois, Wisconsin, Indiana, Ohio, New York, Minnesota, Tennessee, and California.

The Company's plant known as Wisconsin Steel Works at Chicago, Illinois, herein called the plant, is the only plant of the Company involved in this proceeding. The principal raw materials used at the plant are coal, ore, scrap, stone, manganese, and other alloys. During the year 1942, the value of such materials used at the plant was approximately \$16,000,000, of which approximately 85 percent represented materials purchased outside Illinois. The principal products of the plant are carbon, alloy steel, pig iron, and coke byproducts. During the year 1942, the value of such products produced at the plant exceeded \$40,200,000, approximately 50 percent of which was sent from the plant to points outside Illinois.

The Company admits 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. Local Union No. 1178 admits to membership employees of the Company.

Progressive Steel Workers Union is an unaffiliated labor organization, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On August 2, 1943, the United asked the Company to recognize the United as exclusive bargaining representative of employees at the plant. On August 6, 1943, the Company refused so to recognize the United, alleging that a contract between the Company and the Progressive constituted a bar. On August 12, 1943, the United filed the petition in this proceeding.

On August 6, 1942, the Board directed that an election be held among the Company's production and maintenance employees at the plant to determine whether they desired to be represented by the United or by the Progressive or by neither.<sup>1</sup> The Progressive won the

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<sup>1</sup> *Matter of Wisconsin Steel Works, International Harvester Company*, 42 N. L. R. B. 1276.

election and on September 16, 1942, the Board certified the Progressive as sole bargaining agent of the employees concerned.<sup>2</sup> Immediately after the results of the election were announced and before the formal certification was issued, the Company and the Progressive began negotiations for a contract and, on September 17, 1942, the day following the issuance of the Board's certification, signed an exclusive bargaining contract. The contract provided that it be in full force and effect until the September 17 next following the conclusion of hostilities in the wars in which the United States was then engaged, but in any case until September 17, 1943. The contract has already been in operation more than 1 year. The Progressive contends that the contract constitutes a bar to a petition for investigation of representatives for the period of the present hostilities. For reasons fully set forth in a prior representation proceeding,<sup>3</sup> we find no merit in this contention.

The Progressive further contends that certain procedural delays in the settlement of issues submitted by the contracting parties to the National War Labor Board has denied to the Progressive the substantial fruits to which it was entitled as the certified bargaining representative of the Company's employees and that therefore the Board, in its discretion, should refuse to conduct an investigation of representatives at this time. Section IV of the contract of September 17, 1942, originally provided for maintenance of union membership during the life of the contract, with the restriction, however, that the provision should not apply until the National War Labor Board should certify to the Company in writing that a majority of employee members of the Progressive had voted affirmatively on this issue in a referendum to be conducted under the auspices of that federal agency. The contract was then duly submitted for the conduct of the referendum. In December the National War Labor Board notified the Progressive that it did not have the personnel or finances to conduct the referendum, but on or about December 21, 1942, agreed to conduct the referendum if the parties to the contract would bear the expenses. In January it appeared that shortage of personnel would delay the referendum indefinitely, and the Field Examiner of the National War Labor Board recommended that a provision for a 15-day "escape" clause be substituted for the provision for referendum in the original contract. By the agreement of the parties, the contract was thus amended on February 11, 1943. At the hearing, the Progressive offered to prove that subsequent to February 11, 1943, disputes arose concerning the amended

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<sup>2</sup> 44 N. L. R. B. 65.

<sup>3</sup> *Matter of The Traylor Company of America*, 51 N. L. R. B. 1106.

provision; that such disputes were referred for settlement to the National War Labor Board; and that due to procedural delays no settlement of the issues raised was effected until shortly after the close of the contract year. The Trial Examiner rejected the offer of proof. Assuming that proof were made as indicated by the offer, we are of the opinion that the Progressive has not been denied such reasonable and substantial enjoyment of its rights as exclusive bargaining representative of the Company's employees as would justify us in dismissing the petition filed herein. In weighing and resolving the conflicting interests, the Board must, in its discretion, consider the effect to be given to a collective bargaining contract in the light of all surrounding circumstances.<sup>4</sup> No issues are presently pending before the National War Labor Board in connection with the administration of the contract of September 17, 1942, which is determination of representatives at this time could negate or impede. In this respect the instant case is to be clearly differentiated from those recent cases<sup>5</sup> in which the Board, in its discretion, declined to proceed to an election while material issues between an employer and the certified bargaining representative of its employees were pending decision before the National War Labor Board. Under the circumstances of the instant case, we conclude and find that the contract between the Company and the Progressive does not constitute a bar to an immediate determination of representatives pursuant to the petition filed herein.

A statement prepared by the Regional Director and introduced into evidence at the hearing indicates that the United represents a substantial number of employees in the unit herein found appropriate.<sup>6</sup>

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 parties agree, and we find, that all production and maintenance employees employed by the Company at the Wisconsin Steel

<sup>4</sup> Cf. *Matter of The Trailer Company of America, supra*.

<sup>5</sup> *Matter of Aluminum Company of America, Vancouver, Washington*, 53 N. L. R. B. 593; *Matter of Kennecott Copper Corporation*, 51 N. L. R. B. 1140; *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; 52 N. L. R. B. 100

<sup>6</sup> The United submitted to the Regional Director 1,491 cards bearing apparently genuine signatures of employees on the Company's pay roll of August 15, 1942. Twelve of these cards were dated in 1942, 77 were undated, and the remainder were dated in 1943.

There are approximately 4,000 employees in the appropriate unit.

The Progressive submitted no evidence of its present representation among the Company's employees. The Progressive has been sole bargaining representative of the Company's employees since September 1942.

Works, excluding supervisory<sup>7</sup> and managerial employees, confidential employees, plant-protection employees, plant clerical employees, office clerical employees, bricklayers, bricklayer apprentices, and working bricklayer foremen, should be included in the bargaining unit.<sup>8</sup> The parties disagree with respect to the inclusion in the unit of billet dock loaders and assistant billet dock loaders. The United contends that they are supervisory employees and should be excluded as such from the bargaining unit. The Company and the Progressive contend that they are not supervisory employees and should be included in the unit.

A billet dock is a storage yard for billets or pieces of unfinished rolled steel. The Company has five billet docks, where billets are loaded by crane into cars for final processing at the rolling mills. The foreman in charge of the billet docks prepares schedules which indicate the steel which is to be moved for immediate use in the rolling mills. The billet dock loader itemizes the schedule so that the billets may be located and moved in required sequence. The billet dock loader and six assistant billet dock loaders perform substantially the same work at the several docks. A checker locates the billets to be moved and the loader or assistant loader designates the billets to be moved by the crane crew and is responsible for making a written memorandum of the loading comparable to a bill of lading. The billet dock loader and assistant billet dock loaders work directly under the supervision of the foreman and assistant foreman in charge of the billet docks. All loading is machine work. The foreman and the assistant foreman are responsible for directing the work so that the loading of the billets and their delivery to the mills are properly timed. The billet dock loader sometimes makes the assignment of work to the assistant loaders, but they work under the supervision of the foreman or assistant foreman. The billet dock loader and the assistant billet dock loaders have no authority to hire or discharge or to recommend the hire or discharge of the crane crews who work with them. Billet dock loaders and assistant billet dock loaders have been covered by contracts between the Company and the Progressive since 1937. The Company does not regard them as supervisory or managerial employees. Although they have some clerical duties, the United does not seek their exclusion for this reason. We find no evidence that they possess any of the characteristics which would dis-

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<sup>7</sup> Under this category we deem excluded from the bargaining unit all employees who have authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or recommend such action effectively

<sup>8</sup> In the former representation preceding involving the Company's employees, cited in footnote 2 above, the Board found that employees thus described constituted an appropriate bargaining unit, and such employees are presently covered in the contract between the Company and the Progressive.

qualify them from inclusion in the bargaining unit with other production and maintenance employees. For these reasons, and on the basis of the record herein, we shall include them in the bargaining unit.

We find that all production and maintenance employees employed by the Company at the Wisconsin Steel Works, including billet dock loaders and assistant billet dock loaders, but excluding supervisory and managerial employees, confidential employees, plant-protection employees, plant clerical employees, office clerical employees, bricklayers, bricklayer apprentices, and working bricklayer foremen, 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 find that the question which has arisen concerning the representation of the Company's employees can best be resolved by an election by secret ballot. The United requests that its name appear on the ballot as United Steelworkers of America, C. I. O., on behalf of Local Union No. 1178. The Progressive requests that its name appear on the ballot as Progressive Steel Workers Union. We shall grant the requests.

Those eligible to vote in the election shall be all employees of the Company within the unit found appropriate in Section IV, above, 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.

#### 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 International Harvester Company, Chicago, Illinois, 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 Thirteenth 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 of the Company 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 employees 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, C. I. O., on behalf of Local Union No. 1178, or by Progressive Steel Workers Union, for the purposes of collective bargaining, or by neither.